***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 76-7479

## United States Court of Appeals

FOR THE SECOND CIRCUIT

A. E. HOTCHNER,

*Plaintiff-Appellee,*

—against—

JOSE LUIS CASTILLO-PUCHE,

*Defendant,*

—and—

DOUBLEDAY & COMPANY, INC.,

*Defendant-Appellant.*

## JOINT APPENDIX


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UNITED STATES COURT OF APPEALS
FILED
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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74-5516

76-7479

OTCHKIER Vs. JOSE LUIS CASTILLO-ZUCHE and DOUBLEDAY & COMPANY, INC.

| DATE | PROCEEDINGS | Date |
|---|---|---|
| Dec.17-7[illegible] | Filed Complaint and issued Summons. | |
| Dec 27-74 | Filed Summons with marshal's returns. Served: Jose Luis Castillo-Zuche & Doubleday & Co by Mr. Toner on 12-18-74 | |
| Jan7-75 | Filed Deft. Doubleday & Co's Notice of Motion to dismiss Second Cause of Action .....ret. 2-17-75 Rm 705 at 9:30AM. | |
| Jan 7-75 | Filed Deft. Doubleday's Memo. of Law. | |
| Jan 7-75 | Filed Deft. Doubleday & Co's ANSWER. | |
| Jan 13-75 | Filed Stip. & Order that the motion by Doubleday to dismiss the Second Cause of Act is adj. to 2-7-75 & ret. in Rm 705 9:30AM. .....Bryant, J. | |
| Jan 29-75 | Filed Deft. Doubleday & Co's Interrogs. to pltff. | |
| Feb 3-75 | Filed Pltff's Memo. of Law opposing motion to dismiss. | |
| Feb 6-75 | Filed Reply Memo in further support of Doubleday's motion to dismiss. | |
| Feb 11-75 | Filed Memo-End on motion filed 1-7-75... Motion denied without prejudice to re new at trial, or after discovery is complete. While defts' book is not about Hotchner, if, as alleged "knowing and reckless falsehoods" were published with respect to him, it may be actionable under S 51 of the NY Civil Rights Law... .....So Ordered...Bryant,J. m/n | |
| Feb 18-75 | Filed Deft. Doubleday's Notice to take deposition of pltff. | |
| Mar 4-75 | Filed Clerk's Certificate of Mailing Upon JOSE LUIS CASTILLO-ZUCHE CIUDAD PERIODISTAS--EDIF.CAUCA 3, 11C Madrid 34, Spain by Reg.Receipt# 24250 dated 3-4-75. | |
| Mar 12-75 | Filed Deft's Doubleday & Co's Notice of Motion to bring in 3rd pty Deft. ....ret 3-11-75 Rm 705. | |
| Mar 12-75 | Filed Answers of pltff. to Deft. Doubleday's Interrogs. | |
| Mar 13-75 | Filed Memo-End on back of motion filed 3-12-75...Motion granted on Consent & Order signed...Bryant,J. m/n | |
| Mar 13-75 | Filed Order that defts. & 3rd pty pltff Doubleday have leave to make Ediciones Destino S.L. a 3rd pty defts and a party to this action in accordance with said 3rd pty complt....and that the Clerk issue a summons under the seal of this Court, and cause said summons and 3rd pty. complt to be served upon 3rd pty. Deft....(with Consent)...Bryant,J. m/n | |
| 5-7-75 | Filed Add'l Answers of pltff to deft. Doubleday's interrogs. etc. | |
| 5-28-75 | Filed 3rd pty Complt. Summons iss. | |
| 5-29-75 | Filed Pltff's Notice of Motion for an order to amend the complt...ret 6-18-75 Rm 905 at 9:30A. | |
| 5-29-75 | Filed Pltff's Memo of Law in support of motion to amend complt. | |
| 5-30-75 | Filed Clerk's Certificate of Mailing of Summ. & Complt. to Ediciones Destino S.L. Consejo De Ciento 425 5a Planta Barcelona-9 Spain....by Reg. Mail #242531 on 5-30-75..... | |
| 6-16-75 | Filed Deft. Doubleday's Memo of Law in opposition to motion to amend the complt. | |
| 6-17-75 | Filed Affdvt of Service by M. Dais of Summon & Complt upon J. L. Castillo-Zuche on 5-30-75. | |
| 6-19-75 | Filed Pltff's Reply Memo in support of his motion to amend thne complt. | |
| 6-19-75 | Filed Memo-End on back of Motion filed 5-29-75....Motion granted, w/o prej. to deft. Doubleday's contention that the amended pleading will be shown on trial on a rule 56 motion, as insufficient in law....The proposed amended pleading shall be served and filed within 15 days.....So Ordered ...Bryant,J. mn | |
| 6-25-75 | Filed AMENDED COMPLT. ---Demands trial by jury. | |
| 6-[illegible]-75 | Filed Deft. Doubleday's ANSWER to pltff's amended complt. | |
| [illegible] | Filed Deft. Doubleday's Notice of Motion for an order granting Summ Judg... ....ret. 9-10-75 at 10 AM. | |
| 8-[illegible]-75 | Filed Deft. Doubleday's motion for summ. judg. | |
| 8-20-75 | Filed Stip & Order that the time of the motion of Doubleday for summ judg is adj to 10-8-75....Owen,J. | |

Continue on page#3

BEST COPY AVAILABLE

A. T. MONTERET VS LUIS CASTILLO-PUCHI 74 C 5516 CLB

C 111 Rev. Civil Docket Continuation

| DATE | PROCEEDINGS |
|---|---|
| [illegible]-75 | Filed Stip & proposed order.....Brieant,J. |
| 9-22-75 | Filed Plff's affdvt in Opposition to motion for summ.judg. |
| 9-29-75 | Filed Plaintiff's memo of law in opposition to motion for summ. judg. |
| 9-30-75 | Filed deft (Doubleday) reply memo of law in further support of motion for summary judgment. |
| 9-30-75 | Filed Plaintiffs Certificate of Mailing of Compl & summons upon: Gilabert Dentas S.L.---Consejo de Ciento---65 La Plana...Barcelona, Spain...by Mail receipt #302305 dtd 9-30-75. |
| [illegible]-75 | Filed Plaintiff's Request to Enter Default of Def. L. Castillo-Puchi. |
| 10-7-75 | Received return receipt of registered mail #302305. |
| 11-12-75 | Filed Memorandum-Decision & Order #40382. In this diversity action to recover damages for libel & invasion of privacy, deft (Doubleday) has moved for summary judgment dismissing the complaint as to it upon the ground that the statements complained of in the complt are about a public figure & were not not published by them with knowledge of their falsity or with reckless disregard of the truth thereof, and are therefore constitutionally privileged. For reasons indicated, deft Doubleday's motion for summary judgment is denied....BRIEANT,J |
| 12-[illegible]-75 | Filed [illegible] affdvt in support of Deft's motion for certification [illegible] 12-15-75 at 9:30 A.M. [illegible] |
| 1-[illegible]-76 | Filed [illegible] of Plaintiff in support of Deft's motion for certification under 28 [illegible] |
| 1-[illegible]-76 | Filed [illegible] Notice of motion for certification pursuant to [illegible] |
| 2-[illegible]-76 | Filed Order that the motion of Plaff to remove Second Amended Compl... [illegible] and that of Doubleday [illegible] for certification, aim to be [illegible] of this [illegible] and that Plaff's motion to [illegible]...Brieant,J. |
| 2-[illegible]-76 | Filed affdvt [illegible] in opposition to motion for certification. |
| 2-[illegible]-76 | Filed memo of law in opposition to the motion of Deft Doubleday for certification of [illegible]. |
| 2-[illegible]-76 | Filed Deft Doubleday's memorandum of law in support of the motion for certification and in opposition to plaff's motion to amend. |
| 2-[illegible]-76 | Filed [illegible] [illegible] Brieant,J. |
| 1-23-76 | Fld Deposition of Katheryn McGinn taken on 4-23-75. |
| 2-25-76 | Fld Memo of deft Doubleday in opposition to plff's Memo Re:Punitive Damages. |
| 2-26-76 | Fld Defts. Doubleday's Exceptions to Plff's req. to charge. |
| 2-26-76 | Fld " " Reqs to charge the Jury. |
| 3-[illegible]-76 | Filed Stip. [illegible] 3-4-76 to 12-17-75 |
| 3-22-76 | Fld Plaff's Requests to Charge. |
| 3-22-76 | Fld Stip. of Uncontroverted Facts. |
| 3-23-76 | Fld Exception to deft Doubleday's reqs to charge. |
| [illegible]-76 | Fld Stip & Order that testimony of Mrs. H. R. Luce at trial shall be as stated... [illegible]-76....Brieant,J. |
| 4-20-76 | Fld Defts. Doubleday's questions for Voir Dire. |
| 4-21-76 | Fld Deft Doubleday's OSC for an order precluding plaff from offering certain evidence at trial.... ret 4-23-76 [illegible] Brieant,J. |
| 4-2[illegible]-76 | Fld memo End on OSC of Apr 21 1976 [illegible]...motion denied after hearing counsel....So Ordered....Brieant,J. |
| 4-27-76 | Fld Plaff's Exceptions to deft doubleday's questions for Voir Dire. |

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| Date | PROCEEDINGS |
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| 2-2-76 | Filed Doubleday's Special Verdict. |
| 2-3-76 | Filed Doubleday's affdvt. in support of order providing for use by Defts. of answers to interrogs. of pltf as evidence in lieu of his appearance at the trial. |
| 2-3-76 | Filed Writ in behalf of pltff re: punitive damages. |
| 2-24-76 | Filed Pltff's Affidavit & Cert. |
| 2-27-76 | |
| 3-25-76 | |
| 4-12-76 | |
| 4-30-76 | Filed Pltff's Special Appearance & notice of motion for an order quashing the purported service of process...set 5-20-76...9:30 AM Rm 501. |
| 5-10-76 | Filed Deft Bucholz's Memo of law in support of his motion to vacate jmt. & dismiss complt. |
| 5-11-76 | Filed Doubleday's Notice of Motion for an order vacating deft Doubleday's default entered herein on the ground that pltff failed to show at the inquest on damages...set 5-20-76...9:30 AM Rm 501. |
| 5-11-76 | Filed Doubleday's Memo of law in support of his motion for judgment notwithstanding the verdict on the grounds that pltff failed to show at the inquest on damages...set 5-20-76...9:30 AM Rm 501. |
| 5-12-76 | Filed Doubleday's Memo of law in support of his motion for judgment notwithstanding the verdict on the grounds that pltff failed to show at the inquest on damages...set 5-20-76...9:30 AM Rm 501. |
| 5-24-76 | Filed Pltff's affdvt in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 5-24-76 | Filed Pltff's Memo of law in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 5-26-76 | Filed Doubleday's affdvt in support of motion to vacate jmt. & dismiss complt. |
| 5-26-76 | Filed Doubleday's Memo of law in support of motion to vacate jmt. & dismiss complt. |
| 5-28-76 | Filed Pltff's affdvt in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 5-28-76 | Filed Pltff's Memo of law in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 6-1-76 | Filed certified copy of record of proceedings, dated [illegible] |
| 6-2-76 | Filed Doubleday's affdvt in support of motion for judgment notwithstanding the verdict on the grounds that pltff failed to show at the inquest on damages...set 6-10-76...9:30 AM Rm 501. |
| 6-2-76 | Filed Doubleday's Memo of law in support of motion for judgment notwithstanding the verdict on the grounds that pltff failed to show at the inquest on damages...set 6-10-76...9:30 AM Rm 501. |
| 6-2-76 | Filed Doubleday's affdvt in support of motion to vacate jmt. & dismiss complt. |
| 6-2-76 | Filed Doubleday's Memo of law in support of motion to vacate jmt. & dismiss complt. |
| 6-2-76 | Filed Pltff's affdvt in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 6-2-76 | Filed Pltff's Memo of law in opposition to motion of deft Doubleday to vacate jmt. and dismiss complt. |
| 7-30-76 | Filed Memorandum #44899 & Order. On 4-30-76, a jury rendered its Special & General Verdict in this action to recover damages for libel & defamation, & invasion of privacy. For the reasons indicated, the Court grants the pltff's motion to the 3rd-party complt is abandoned & it is dismissed without prejudice. The Clerk of the Court, pursuant to Rule 58, shall enter judgment in favor of pltff against deft Doubleday & Co., Inc. For the sum of $125,000 & taxable costs. The complt is dismissed without prejudice as to deft Jose Luis Castillo-Puche for want of personal jurisdiction over that deft, & the 3rd-party complt is dismissed without prejudice. MAIN, J. m/n |
| 8-1-76 | Filed Bucholz Memo and Order #44899 Dismissal of 3rd-pty complt was in error and that direction is vacated. There was valid service effected on this contract claim of the 3rd-pty deft is in default. The final judgment shall provide that Doubleday shall recover the full amt of the judgment against it, from Bucholz including D.A. and its costs to be taxed. So Ordered. Orrisant, J. and 10 pp. mailed, Bkd. Ordered that pltff A. E. Hotchner have judgment vs deft Doubleday & Co. in the amt of $[illegible] with costs to be taxed and that the complt is dismissed as to deft J. L. Castillo-Puche, w/o prej and that deft had |

(continued on page 75)

| DATE | PROCEEDINGS |
|---|---|
| | Continuation of Judgment dtd 9...form page7..... |
| | 3rd pty pltff Doubleday & Co. ...judgment as to 3rd pty defdt Edicions Destino S.A. in the amt of $[illegible], and pltff's costs as taxed, and its own costs to be taxed....Burghardt, Clerk)-2-76- Approved Orient,J. mn |
| 9-9-76 | Fld Bill of Costs on Judg.#73,200 ...No appearance in opposition bill costs taxed in the sum of $853.95, in favor of pltff as against do Doubleday only and add to judgment. |
| 9-22-76 | Fld Supplemental Bon#80172 6 95...in the sum of$139,002.22. by Fed. Ins Co. |
| 9-23-76 | Fld Doubleday's Notice of Appeal to USCA from order dtd 2-1-75 etc... Notices mailed on 9-27-76 to Morvin Rosenman & Stannage & Hayton Esqs. |

D. C. 111 Criminal Continuation Sheet

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

Case No. 74 Civ. 5516-CLB

JUDGE Brieant

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

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| Order that defendant and third party plaintiff Doubleday have leave to make Ediciones Destino S.L. a third party defendant and a party to this action in accordance with said third party complaint. The Clerk is to issue summons and third party complaint to be served upon third party defendant. | 14 |
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RECORD FOLDER

305,297
EW 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516-CLB

SUPPLEMENTAL INDEX CONTAINING TRIAL EXHIBITS TO BE INCLUDED IN RECORD ON APPEAL

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

PLAINTIFF'S EXHIBITS WHICH WERE ADMITTED IN EVIDENCE

1. Doubleday edition of HEMINGWAY IN SPAIN by Jose Luis Castillo-Puche published in 1974.

2. Publishing agreement between Doubleday and Ediciones Destino S.L. dated May 18, 1970 granting Doubleday the English language translation rights to HEMINGWAY IN SPAIN.

3. Letter amending publishing agreement between Doubleday and Ediciones Destino S.L. dated September 23, 1970.

4. Letter from Doubleday's Editor Kate Medina to Mrs. Beverly Gordey dated October 1, 1970.

5A, 5B, 5C, 5D, 5D-1, 5E, 5F, 5G - Copies of pages of original translation by Helen Lane with revisions by Doubleday.

6. Note written by Doubleday's Editor Medina listing pages of translation in which reference to A. E. Hotchner is made.

7. Memorandum from Doubleday's Editor Medina to Doubleday's Dick Cariello dated July 12, 1973.

8. Note written by Doubleday's Editor Medina captioned "Bell-fair use".

9. Memorandum from Doubleday's Bill Austin to Doubleday's Editor Medina dated July 17, 1973.

10. Note written by Doubleday's Editor Medina captioned "Bill".

11. Letter from Doubleday's Editor Medina to Castillo-Puche dated August 6, 1973.

12. Letter from Castillo-Puche to Doubleday's Editor Medina dated September 12, 1973.

13. Letter from Doubleday's Editor Medina to Castillo-Puche dated October 10, 1973.

14. Letter from Castillo-Puche to Doubleday's Editor Medina dated October, 1973.

15. Letter to Castillo-Puche from Doubleday's Editor Medina dated October 30, 1973.

16. Letter from Translator Lane to Doubleday's Editor Medina dated November 2, 1971.

17. Letter from Translator Lane to Doubleday's Editor Medina dated October 25, 1972.

18. Letter from Doubleday's Editor Medina to Translator Lane dated March 12, 1973.

19. Letter from Translator Lane to Doubleday's Editor Medina dated March 21, 1973.

20. Letter from Assistant to Doubleday's Editor Medina to Mrs. Mary Hemingway dated April 29, 1974.

21. Letter from Doubleday's Editor Medina to Mrs. Mary Hemingway dated March 28, 1973.

22. Letter from Doubleday's Editor Medina to A. E. Hotchner dated March 12, 1973.

24. Letter from Doubleday's Editor Medina to Translator Lane dated September 10, 1973.

26. Ediciones Destino S.L. edition of HEMINGWAY ENTRE LA VIDA Y LA MUERTE by Castillo-Puche published in 1968.

28. Paperback edition of PAPA HEMINGWAY by A.E. Hotchner copyright 1955, 1959 and 1966.

29A, 29B, 29C - LIFE magazine articles containing "The Dangerous Summer" by Ernest Hemingway published in 1964.

30. Comparison of plaintiff's Purczinski translation with original translation of Translator Lane and statements contained in Exhibit 1 HEMINGWAY IN SPAIN by Castillo-Puche.

31. Extracts from correspondence from Ernest Hemingway and Mary Hemingway to plaintiff.

32. Book review of HEMINGWAY IN SPAIN by Castillo-Puche appearing in NEWSWEEK magazine of May 27, 1974.

33. Book review of HEMINGWAY IN SPAIN by Castillo-Puche which appeared in "Best Sellers' published by University of Scranton August 15, 1974.

34. Spanish article "Hemingway - canta el riau-riau" - Gaceta Ilustrada by Castillo-Puche dated August 8, 1959.

35. Translation of Exhibit 34 by Translator Purczinski.

36. DORIS DAY: HER OWN STORY by A. E. Hotchner published in 1976.

37. Letter from Bernard Oldsey to Doubleday's Sam Vaughan dated March 30, 1971.

39. Letter from counsel for Doubleday to counsel for plaintiff dated July 24, 1975.

41. Excerpts from the LIVING WEBSTER ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE containing definition of: drivel, hoodlum, hypocrite, obsequious, rascal, riffraff, toady, treacherous, two-faced.

42. Postcard from Mary and Ernest Hemingway to plaintiff dated September 6, 1959, and typescript thereof.

43. Letter from Ernest Hemingway to A. E. Hotchner dated September 20, 1959.

43A. Typescript of Exhibit 43.

44. Letter from Ernest Hemingway to A. E. Hotchner dated August 2, 1960.

44A. Typescript of Exhibit 44.

46. Letter from Alfred E. Rice to A. E. Hotchner dated May 1, 1958.

47. Letter from Alfred E. Rice to A. E. Hotchner dated April 7, 1959.

48. Undated copy of letter from Mary Hemingway to A. E. Hotchner.

49. Letter from Mary Hemingway to A. E. Hotchner dated August 26, 1958.

50. Letter from Mary Hemingway to A. E. Hotchner dated Sunday, November 8.

51. Telegram from "Papa Mary" to A. E. Hotchner dated January 10, 1961.

52. Letter from Mary Hemingway to A. E. Hotchner dated Thursday, May 4.

53. Letter from Mary Hemingway to A. E. Hotchner dated September 2, 1965.

55. Title page of "A Moveable Feast" by Ernest Hemingway with inscription dated April 16, 1964.

DEFENDANTS' EXHIBITS WHICH WERE ADMITTED IN EVIDENCE

A. Enlarged photograph of A. E. Hotchner, Ernest Hemingway, Castillo-Puche and Valerie Hemingway at Pamplona.

B. Additional voir dire questions posed by defendant Doubleday.

C. Enlarged photograph of Ernest Hemingway and Castillo-Puche.

D. Enlarged photograph of Ernest Hemingway, Bill Davis and Castillo-Puche at the run of the bulls in Pamplona.

E. Enlarged photograph of Ernest Hemingway and Castillo-Puche.

F. Enlarged photograph of Ernest Hemingway, Bill Davis and Castillo-Puche walking in Pamplona.

G. Enlarged photograph of Ernest Hemingway and Castillo-Puce.

H. Enlarged photograph of Ernest Hemingway and Castillo-Puce in Cuba.

J. Copy of article from PUBLISHERS' WEEKLY entitled DORIS DAY: HER OWN STORY.

K. Book review of HEMINGWAY IN SPAIN which appeared in SUNDAY ADVOCATE, Baton Rouge, La. dated June 9, 1974.

L. Book review of HEMINGWAY IN SPAIN by Gladwin Hill which appeared in SUNDAY PRESS - Enterprise, Riverside, California dated July 21, 1974.

M. Enlarged photograph of Ernest Hemingway, Bill Davis and Castillo-Puche at the offices of Pueblo in Madrid.

N. Enlarged photograph of letter from Ernest Hemingway to Castillo-Puche dated April 12, 1957.

O. Copy of affidavit of Mary Schoonmaker sworn to September 11, 1975, which was submitted by plaintiff in opposition to Doubleday's motion for summary judgment.

P. SATURDAY REVIEW article on HEMINGWAY ENTRE LA VIDA Y LA MUERTE by Robert J. Clements dated April 5, 1969.

Q. Report on HEMINGWAY IN SPAIN dated January 24, 1969 by Ernst Pawel.

R. Report on HEMINGWAY IN SPAIN dated February 16, 1970 by Emile Capouya.

S. Partial list of translations by Translator Lane.

T. Copy of agreement between Doubleday and Translator Lane dated October 8, 1971 with respect to her translation from Spanish into English of HEMINGWAY: BETWEEN LIFE AND DEATH: by Castillo-Puche.

U. Letter from Translator Lane to Doubleday's Editor Medina dated April 21, 1970.

V. Memorandum containing questions by Doubleday Copy Editor Hoffman.

X. Letter from Castillo-Puche to Doubleday's Editor Medina dated June 8, 1973.

Y. Memorandum from Translator Lane to Doubleday respecting questions raised by Copy Editor Hoffman dated October 10, 1973.

Z. Doubleday title information sheet with respect to HEMINGWAY IN SPAIN.

AA. English translation of Exhibit N.

# 11a

AB Hardbound edition of PAPA HEMINGWAY by A. E. Hotchner copyright 1955, 1959 and 1966.

AC Enlarged photograph of Ernest Hemingway and Mary Hemingway.

(1)

12a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| A.E. HOTCHNER, | : | |
| Plaintiff, | : | 74 Civ. 5516 (CLB) |
| -against- | : | AMENDED COMPLAINT |
| JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., | : | Plaintiff Demands Trial by Jury |
| Defendant. | : | |

Plaintiff A.E. Hotchner by his attorney, Mervin Roseman, for his amended complaint herein alleges:

AS AND FOR A FIRST CAUSE OF ACTION:

1. Plaintiff is, and was at all times hereinafter mentioned, a resident of the Town of Westport, State of Connecticut.

2. Defendant Jose Luis Castillo-Puche (hereinafter "Puche") is and was at all times hereinafter mentioned, a citizen of Spain and upon information and belief resides in the City of Madrid.

3. Defendant Doubleday & Company, Inc. (hereinafter "Doubleday") is a corporation organized and existing under the laws of the State of New York with its principal place of business in the City of New York, State of New York.

4. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000).

5. By virtue of the foregoing, the requisite diversity of citizenship exists between plaintiff and both defendants to confer jurisdiction on this Court.

6. On or about June 1974 defendant Doubleday published in the United States and other English-speaking countries a book entitled "Hemingway in Spain" (hereinafter the "Book"), written by defendant Puche, a copy of which is deemed annexed hereto as an Exhibit.

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7. A. Said Hemingway is Ernest Hemingway, the famous author, sometimes called by defendant Puche "Ernesto", the Spanish version of his first name, or at other times, "Papa".

B. Plaintiff, by virtue of his red hair and freckles, was called by certain of the Spanish-speaking friends of Hemingway "El Pechas", which in English means "the freckled one", or "Freckles".

8. Defendants Puche and Doubleday wrongfully, deliberately, recklessly and maliciously, with intent to injure, defame and destroy the good name and reputation of the plaintiff and to bring him into public scandal and disgrace among his neighbors and among persons engaged in the theatrical, literary, public lecture, motion picture, television industries and the public generally, falsely and maliciously composed and published and caused to be published the Book containing false, scandalous, defamatory and libelous matter, as set forth in paragraph 8, and containing innuendoes and meanings, as set forth in paragraph 9.

9. Said false, scandalous, defamatory and libelous matter as to plaintiff contained in the Book is as follows:

(a) On page 81, beginning on line 40, and continuing on page 82, lines 1-5, plaintiff is described as "riff-raff" and as a "toady" whom Hemingway could not live without but nevertheless secretly despised, as follows:

> "This was yet another point of resemblance between Ernesto and Don Pio Baroja, whose intimates, for the most part, were also an irritating bunch of mediocre, coarse, vulgar sycophants.
>
> Copying the example of the toreros, Ernesto surrounded himself with a sort of entourage of riff-raff. He had many very respectable friends, but was also surrounded by many hangers-on, a whole raft of toadies whom he couldn't do without but nonetheless secretly despised. They were the last remaining traces of a certain ambition of Ernesto's, to be at once a prince and a rogue, and in a certain sense they made him feel invulnerable."

And on page 82, lines 28-31:

> "It was Ordonez, as I remember, who first called him 'Freckles', and the nickname stuck. He pretended not

to mind and was good-natured about everything, but he was such a toady at times that it was sickening."

(b) On page 82, lines 6-11, plaintiff is described as a person who could become a Bible-thumper or a bum, as follows:

"The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum."

(c) On page 82, lines 20-25, plaintiff is described as "two-faced" and a "hypocrite", as follows:

"The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, people such as Juanito Quintana and even Ordonez. Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite. But he put up a very good front as Ernesto's mild-mannered, obedient servant."

(d) On page 82, lines 30-32, plaintiff is described as a speaker of "drivel" and as obsequious, as follows:

"Ernesto rather liked Hotchner's funny stories and put up with his drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears."

(e) On page 82, beginning on line 32, and continuing on page 83, plaintiff is described as "an expert at grinding out publicity in the United States", "an exploiter of Hemingway" and a hypocrite, as follows:

"Hotchner did his best all summer long to make the imaginary duel between Ordonez and Dominguin a real one; in moments when Ernesto was tense or had no one around for company, he was half convinced he was witnessing a genuine 'civil war' in the bullfight world, though I for my part thought the whole affair was a big laugh, and almost everyone else did too.

As an expert at grinding out publicity in the United States, Hotchner knew what a big splash Ernesto's articles were going to make, and was already bragging about what a coup they would be.

I felt very bad about those Life articles, called The Dangerous Summer, to tell the truth, because it seemed to me that the whole farce was beneath Ernesto and that he should have refused to have anything to do with it.

'Freckles' was never open and aboveboard. His mild manner and his air of shy diffidence seemed to me quite a cover-up for his exploitation of Ernesto."

(f) On page 161, beginning on line 12, defendants assert that Hemingway didn't trust plaintiff, as follows:

"Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.'

'I can see that he's very fond of you,' I replied.

Then, a little while later, he'd whispered, 'I don't really trust him, though.'"

(g) Plaintiff is described as a pimp or panderer to Hemingway, beginning on page 161, line 18, as follows:

"Remembering what Ernesto had said about Hotchner naturally reminded me of the Irish girl who had come to play a more and more important role in that cast of kooks at the San Fermin fiesta. 'Freckles' had kept whispering in Ernesto's ear, and Ernesto had tried to convince himself that this rather ordinary-looking girl with a mysterious, charming personality could fill the great empty spot in his heart. It was really a rather cruel irony" At one point he took me aside and said, 'You keep eying her.'

'Who, me?'

'You seem quite taken with her.'

'Oh Ernesto! Come on!'

'Listen, she's all yours.'

But all this was merely the opening scene in the opera buffa. Next came the enthusiastic chorus of girl students who kept pretending they were innocent young things. Ernesto said to me: 'Where dd you suppose their maidenheads went?'"

(h) Plaintiff is called a "picturesque rascal and crass opportunist", beginning on page 161, line 39 and continuing on page 162, as follows:

"Mary Hemingway knew very well what was gold and what was mere tinsel in the bullfight world, what was theatrical show and what was truly courageious and noble. Mary and Ordonez knew the difference between picturesque rascals and crass opportunists. At one point Antonio said to Ernesto, 'I can see that 'Freckles' is a great help to you.'

And Ernesto replied, 'Freckles' is tops, in my estimation.'

'And your 'nigger' is a hard worker.'

'He's my bodyguard.'

'But what would you be without Mary?' Antonio said slyly. And then he added, 'You must pay her very well.'

'I don't think she has any reason to complain', Ernesto replied.

'She does more for you than anybody,' Antonio went on. 'What would you be without her.'

'It would be absolute disaster,' Ernesto replied. And added, 'What would you be without Carmen?'

'A total wreck,' Ordonez said.

'We'd both be total wrecks,' Ernesto said.

'That's right—we'd both be total wrecks," Ordonez agreed."

(i) Plaintiff is described as a publicity hound and sponger beginning on page 162, line 14, immediately after the words quoted in subparagraph (h) above, as follows:-

> "I found all these memories amusing, just as it was very amusing to remember Quintana, a great gentleman and one of Ernesto's oldest friends, laughing indulgently; or Matias sitting quietly watching, for all this commotion that Ernesto was the center of struck him as a sort of absurd carnival Matias knew publicity hounds and spongers when he saw them."

(j) Plaintiff is described as untrustworthy, beginning on page 182, line 41, as follows:

> "At one point, Ernesto turned to me and whispered in my ear: 'Hotchner's a good friend of mine, but he's a sharp customer.'
> I thought Ernesto meant that as a compliment, and I said, 'Yes, it's quite obvious he's an awfully clever fellow.'
> 'Yes, he's terribly intelligent, but he's also out for number one.'"

(k) Defendants state that plaintiff was jealous at Hemingway having other friends, beginning on page 185, line 12, as follows:

> "Juanito Quintana turned up just then, and I noticed that Hotchner took an instant dislike to him. I also noticed that the moment Juanito appeared, Ernesto paid no attention to any of the rest of us, including the women, and the two of them immediately began talking of bullfighting. *** Hotchner's nose was obviously out of joint on seeing what intimate friends the great maestro and this Celto-Iberian whom Hotchner considered a mere matador's peon were***"

(l) Plaintiff is described as looking like a "crafty gypsy" beginning on page 196, line 23, as follows:

> "The most standoff[illegible]h and wary of the group was 'Freckles' Hotchner, lolling in his chair looking like a crafty gypsy and watching all of us with that strange expression of his, half lustful and half on the defensive. He was laughing and applauding and singing and taking it all in, but despite the easy air of easy camaraderie, it was quite noticeable that he was subtly playing the role of ringmaster. He was very careful to be properly attentive to Mary and extremely polite to her and the other guests, but he kept his eye on Ernesto every minute, watching his every move and listening to his every word, especially when he was approached by journalists or photographers."

(m) Plaintiff is described as having acted as Hemingway's agent for television networks and mass-circulation magazines and being paid



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for his services as such beginning on page 196, line 32, as follows:

> "'Freckles' was in complete control of the situation, and I wasn't at all surprised that he had earned lots of money for Ernesto by signing him up with the television networks and mass-circulation American magazines, though I was quite certain Hotchner had been motivated by something other than worshipful admiration for a great writer."

(n) Plaintiff is described as motivated by money he was to make by the articles to be written by Hemingway of the rivalry between the two matadors (Dominguin and Ordonez) and their bullfights that summer, beginning on page 203, line 21, as follows:

> "And the two or three times that Ernesto tried to explain to me why the duel between Dominguin and Ordonez was so important, the whole thing left me rather cold. I didn't really understand what all the fuss was about. They had managed to kindle some sort of fire that 'dangerous summer', but I never felt warmed by it. But 'Freckles' was delighted at the thought of how much money they were going to make, what with all the talk of a great rivalry between the two matadors."

(o) Plaintiff is described as a ridiculous exploiter of his [Hemingway's] reputation, beginning on page 318, beginning line 2:

> "Only a woman like Mary could have put up with those two ridiculous figures who hung around Ernesto every minute: Davis the jealous watchdog of his fame and fortune and Hotchner the exploiter of his reputation. Only Mary knew that Ernesto's real riches were intangible, and therefore she allowed him and Davis and Hotchner to do as they pleased. It is possible that his two American friends may have sincerely thought they were looking after his interests and protecting him."

(p) Plaintiff is described as an employee of Hemingway, beginning on page 320, line 12, as follows:

> "'What about Freckles? What would you do without him?' And Hotchner flashed 'Papa' a sly smile, playing the game with him along with the rest of them. Ernesto looked Antonio up and down and said, 'You're right--what would I do without Freckles? But if he's unhappy working for me, you can sign him up as one of your assistants. Maybe he's just now discovering his real vocation--he's thinking of running with the bulls, you know, and maybe he'll turn out to be a serious rival of yours some day.'
> 'We'll try him out, shall we?'"

(q) By describing plaintiff as Hemingway's financial adviser beginning on page 324, line 26, as follows:

"Ernesto sometimes used to leave the door of his room open, so that Hotchner, his financial adviser, and Davis, his major-domo and bodyguard, could come and go as they pleased."

(r) By describing plaintiff as Hemingway's business manager, beginning on page 325, line 10, as follows:

"Davis was an enormous help to him in preparing his text, and Hotchner was always close at hand to help him settle urgent business in the States."

10. By the words and language set forth in paragraph 9 above defendants Doubleday and Puche meant and intended to mean, and were understood by readers of the book to mean, among other things:

(a) That the plaintiff was not a true friend of Hemingway but pretended to be such, and exploited Hemingway in the expectation of plaintiff's personal financial gain;

(b) That plaintiff in his alleged capacity as Hemingway's agent for television networks and mass-circulation magazines, as a financial advisor and business manager, and one who looked out for Hemingway's financial interests or acted as Hemingway's employee, urged Hemingway to writing activities which were inimical to Hemingway's best interest, plaintiff's actions being dominated by expectation of financial gain from Hemingway's writings;

(c) That plaintiff was to share in the money from the publication of the articles called "The Dangerous Summer" published in Life magazine and urged Hemingway to write them even though plaintiff knew the underlying thesis of those articles was a farce;

(d) That Hemingway despised plaintiff, did not trust plaintiff and believed that plaintiff was only motivated by the expectation of plaintiff's financial gain arising out of his friendship with Hemingway;

(e) That plaintiff is a person of low moral character, being riff-raff, a toady, two-faced, a hypocrite, a picturesque rascal, a crass opportunist, who was obsequious and who only pretended friendship for Hemingway;

(f) That plaintiff had the characteristics of a Bible-thumper or a bum;

(g) That plaintiff acted as a pimp and panderer urging Hemingway to have a secret sexual affair with an Irish girl im Pamplona, Spain, even though plaintiff was then a close friend of Hemingway's wife, who was also present in Pamplona.

(h) That plaintiff was jealous of Hemingway's having other friends, the innuendo being that such other friends might jeopardize plaintiff's alleged profitable relationship with Hemingway.

All of the foregoing meanings and innuendos are totally false and defamatory.

11. Plaintiff is known, and enjoys a good reputation, as a writer in various media of communication, having written the following:

A. A play produced on Broadway entitled "The White House" starring Helen Hayes and two plays produced on road tour, one entitled "The Short, Happy Life", starring Rod Steiger, and the other "The Hemingway Hero", starring Gary Merrill.

B. Many television plays, some of which were original dramas for television, including "Last Clear Chance", starri g Paul Muni and "The Vanishing Point", starring Peter Lorre and Claude Raines, and some of which were adaptations of Hemingway novels and short stories.

C. A motion picture entitled "Adventures of a Young Man" starring Paul Newman.

D. Two novels named "The Dangerous American" and "Treasure", published by Random House, Inc.

E. Two books of memoirs of plaintiff's childhood, one named "King of the Hill", published by Harper & Row, Inc. and the other, "Looking for Miracles", currently being published by that firm.

F. A national best-seller, in both hard cover and soft cover, of memoirs of his friendship with Hemingway entitled "Papa Hemingway",

published in 1966 by said Random House, which was later published and became a best-seller in England, France, Germany and 15 other countries.

G. Plaintiff was formerly articles editor of Cosmopolitan Magazine and has written more than 300 articles and short stories in such national magazines as Esquire, Saturday Evening Post, Look, Life, Reader's Digest, Cosmopolitan, etc.

H. Plaintiff, on the basis of "Papa Hemingway", was selected by William Morrow & Co. and Bantam Books to write, and is currently writing, the biography of Doris Day; plaintiff has in the past been requested by other publishers to write biographies of other prominent persons. In addition plaintiff enjoys a good reputation as a lecturer, having given approximately 50 lectures in universities and before civic groups throughout the United States, in tours arranged by W. Colston Leigh Inc.

12. At the time of the publication of the Book, both of the defendants knew that the statements complained of in paragraph 9 concerning plaintiff were false, untrue or had serious doubts as to the truth thereof and published said statements in disregard of the truth.

13. By reason of the publication of the Book, plaintiff has been held up to public contempt, disgrace and ridicule; has suffered great mental anguish and has been irreparably injured in his reputation and his activities both as a writer in the various media set forth in paragraph 11 and as a lecturer, and has been damaged in the amount of one million dollars ($1,000,000).

AS AND FOR A SECOND CAUSE OF ACTION:

14. Repeats and realleges each allegation in paragraphs 1 through 7, 9 and 11 above.

15. In addition to the portions of the Book concerning plaintiff as pleaded herein, there is a picture of plaintiff in the Book.

16. Defendants are taking pecuniary advantage of plaintiff's name, photograph and private life to create for profit a fictionalized and dramatic

story, fanciful and sensational in nature, designed primarily and exclusively for entertainment value, and to thrill and amuse the reading public.

17. Plaintiff does not speak the Spanish language and defendant Puche does not have a working knowledge of the English language.

18. Many of the incidents and conversations concerning plaintiff and concerning Hemingway, both those as to which plaintiff is allegedly present according to defendant Puche and on occasions when it is unclear whether or not plaintiff Hotchner was present, never took place, the conversations were never held and all are completely fictionalized by defendant Puche.

19. At the time of the publication of the Book both of the defendants knew, or with the exercise of reasonable care could have ascertained, that the Book is infected with substantial falsified material and that the work was published maliciously with the knowledge of such falsification or with reckless disregard for the truth.

20. Defendants' use of plaintiff's name, picture and purported incidents of his life were and are done in the State of New York and elsewhere knowingly and without his consent, and in violation and contrary to the provisions of Section 51 of the Civil Rights Law of the State of New York.

21. By reason of the publication of the Book, plaintiff has been held up to public contempt, disgrace and ridicule; has suffered great mental anguish and has been irreparably injured in his activities both as a writer in the various media set forth in paragraph 11 and as a lecturer, and has been damaged in the amount of five hundred thousand dollars ($500,000).

WHEREFORE plaintiff demands judgment in the amount of one million five hundred thousand dollars ($1,500,000), together with exemplary damages, together with the costs and disbursements of this action.

Dated: New York, N.Y.
May28, 1975.

Mervin Rosenman

MERVIN ROSENMAN
Attorney for Plaintiff
Office and P.O. Address
41 East 57th Street
New York, N.Y. 10022
(212) 371-3633

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

- - - - - - - - - - - - - - - - - - - -x

74 Civ. 5516 (CLB)

AMENDED ANSWER

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

- - - - - - - - - - - - - - - - - - - -x

Defendant Doubleday & Company, Inc. ("Doubleday") by its attorneys Satterlee & Stephens, for its answer to plaintiff's amended complaint alleges, upon information and belief:

AS TO THE FIRST
CAUSE OF ACTION

1. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs 1, 2, 5, 7 and 11.

2. Denies each and every allegation contained in paragraphs 4, 8, 10, 12 and 13.

3. Denies each and every allegation contained in paragraph 6 except admits that in the United States it published a book entitled Hemingway in Spain (the "Book"), by defendant Castillo-Puche.

4. Denies each and every allegation contained in paragraph 9 and begs leave to refer to a true copy of the Book for the complete and accurate context of each and every quotation contained in paragraph 9(a)-(r).

AS TO THE SECOND
CAUSE OF ACTION

5. With respect to paragraph 14, repeats each and every admission and denial heretofore pleaded in answer to the allegations contained in paragraphs 1-7, 9 and 11 respectively of the complaint with the same force and effect as if the same were set forth herein at length.

6. Denies each and every allegation contained in paragraph 15, except admits that photograph 11 in the Book, between pages 152 and 153, purports to be a picture of Hemingway, "Miss Valerie," defendant Castillo-Puche and plaintiff.

7. Denies each and every allegation contained in paragraphs 16, 19, 20 and 21.

8. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs 17 and 18.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

9. Plaintiff has failed to state a claim upon which relief may be granted.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

10. Plaintiff, by reason of his admitted activities as a writer of one Broadway play, two plays produced on road tour,

many television plays, a motion picture, two novels, two books of childhood memoirs, a best-seller in 19 countries entitled Papa Hemingway, and more than 300 magazine articles and short stories, and as a lecturer before universities and civic groups throughout the United States, as well as by reason of his close connection, association and frequent public appearances with Ernest Hemingway, is a public figure.

11. Any statements made concerning plaintiff and any pictures of plaintiff contained in the Book are constitutionally privileged.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

12. The author of the Book was personally acquainted with plaintiff and had personally observed plaintiff and Ernest Hemingway together on numerous occasions.

13. The statements in the book which plaintiff claims are libelous are, to the extent that any may be defamatory of plaintiff, all based on the author's observation and represent fair comment by the author based on such observation.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

14. This action is barred by the running of the applicable statute of limitations.

AS AND FOR A FIFTH
PARTIAL AFFIRMATIVE
DEFENSE

15. Plaintiff has failed to state a claim upon which exemplary damages may be awarded.

WHEREFORE, defendant Doubleday & Company, Inc. demands judgment against plaintiff dismissing the complaint in this action, together with costs and disbursements of this action.

Dated: New York, New York
July 14, 1975.

SATTERLEE & STEPHENS

By _____

Attorneys for Defendant
Doubleday & Company, Inc.
277 Park Avenue
New York, New York 10017
(212) 826-6200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| A. E. HOTCHNER, Plaintiff, - against - JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., Defendants. | 74 Civ. 5516 (CLB) NOTICE OF MOTION TO DISMISS SECOND CAUSE OF ACTION |

S I R:

PLEASE TAKE NOTICE that upon the complaint dated December 16, 1974, the undersigned will move this court before the Honorable Charles L. Brieant at the United States Courthouse, Foley Square, New York, New York, Room 706 on January 17, 1975, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure granting the motion of defendant Doubleday & Company, Inc. to dismiss the "Second Cause of Action" and to strike it from the complaint, on the ground that there is no genuine issue as to any material fact and that the defendant Doubleday & Company, Inc. is entitled to a judgment as a matter of law in that the "Second Cause of Action" does not state a claim upon which relief may be granted.

Dated: New York, New York
January 6, 1975

SATTERLEE & STEPHENS

By /s/ Robert M. Callagy

Attorneys for Defendant
Doubleday & Company, Inc.
277 Park Avenue
New York, New York 10017
(212) 826-6200

TO:

Mervin Rosenman, Esq.
Attorney for Plaintiff
41 East 57th Street
New York, New York 10022

ENDORSEMENT

A.E. HOTCHNER, Plaintiff, v. JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., Defendants. 74 Civ. 5516-CLB

Motion denied without prejudice to renew at trial, or after discovery is complete. While defendants' book is not about Hotchner, if, as alleged "knowing and reckless falsehoods" were published with respect to him, it may be actionable under §51 of the New York Civil Rights Law. See Time, Inc. v. Hill, 385 U.S. 374 (1967) as explained in Cantrell v. Forest City Pub. Co., ____ U.S. ____, 43 U.S.L.W. 4079-80 (1974).

So Ordered.

Dated: New York, New York
February 7, 1975

U.S. DISTRICT COURT FILED FEB 11 1975 S.D. OF N.Y.

MICROFILM FEB 11 1975

Charles L. Brieant, Jr.
CHARLES L. BRIEANT, JR.
U. S. D. J.

NOTICE OF ENTRY

Please take notice that the within is a copy, was on the ___ day of ___ 197 , duly entered and filed in the office of the Clerk of

Dated, New York, N. Y. 197

Yours, etc.

SATTERLEE & STEPHENS

Attorneys for

277 PARK AVENUE

New York, N. Y. 10017

To

Attorney for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 5516 (CLB)

A. E. HOTCHNER,

Plaintiff,

- against -

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

(ORIGINAL)

NOTICE OF MOTION TO DISMISS SECOND CAUSE OF ACTION

SATTERLEE & STEPHENS
Attorneys for Defendant Doubleday & Company, Inc.
277 PARK AVENUE
BOROUGH OF MANHATTAN
NEW YORK, N. Y. 10017

RECORD FOLDER
RECEIVED
DATE FILED 5/28
REFERRED TO RMC RSA
SATTERLEE & STEPHENS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

NOTICE OF MOTION TO AMEND COMPLAINT

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Mervin Rosenman, the accompanying Memorandum of Law and the proposed Amended Complaint, and all prior proceedings, the undersigned will move this Court before the Honorable Charles L. Brieant in Room 905 of the United States Court House, Foley Square, New York, N.Y. on the 18th day of June, 1975, at 9:30 a.m., or as soon thereafter as counsel may be heard for an order pursuant to Rule 15(a) of the Federal Rules of Civil Procedure granting leave to plaintiff to serve upon defendants said Amended Complaint.

Dated: New York, N.Y.
May 28, 1975

Mervin Rosenman

MERVIN ROSENMAN
Attorney for Plaintiff
Office and P.O. Address
41 East 57th Street
New York, N.Y. 10022
(212) 371-3633

TO:

SATTERLEE & STEPHENS, Esqs.
Attorneys for Defendant Doubleday & Company, Inc.
277 Park Avenue
New York, N.Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-FUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

AFFIDAVIT RE MOTION TO AMEND COMPLAINT

---

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

Mervin Rosenman, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff Hotchner herein and am thoroughly familiar with all of the proceedings heretofore had herein.

2. I make this affidavit in support of a motion to amend the complaint by adding five words, one word to paragraph 19 (of the Second Cause of Action which deals with the violation of §51 of the Civil Rights Law of New York) and four words added to the "WHEREFORE" clause (the words to be added being shown by underlining as follows):

> 19. At the time of the publication of the Book both defendants knew, or with the exercise of reasonable care could have ascertained, that the Book is infected with substantial falsified material and that the work was published maliciously with knowledge of such falsification or with reckless disregard for the truth.
>
> * * * *
>
> WHEREFORE plaintiff demands judgment in the amount of one million five hundred thousand dollars ($1,500,000), together with exemplary damages, together with the costs and disbursements of this action.

3. It is inexplicable why defendant Doubleday & Company, Inc. ("Doubleday") has not consented to this amendment of the complaint. I wrote to Mr. Callagy of Satterlee & Stephens, attorneys for Doubleday, on March 18, 1975 requesting that he consent to this amendment by stipulation. This was prior to any of the discovery proceedings held herein and hence there can be no claim of surprise or prejudice on the part of defendant Doubleday.

4. The reason for these amendments are that the word "maliciously" was inadvertently omitted by my secretary in typing the complaint, which omission was not discovered prior to service of the complaint. The demand in the "WHEREFORE" clause for exemplary damages arose out of research done by my firm in connection with opposing defendant Doubleday's unsuccessful motion to dismiss the Second Cause of Action herein.

5. Part of the proof of malice as to defendant Doubleday which plaintiff will offer at trial will consist of the following:

(a) Defendant Jose Luis Castillo-Puche ("Puche"), author of "Hemingway in Spain" (the "Book"), in a page of the original translation from Spanish to English produced from the Doubleday files, quotes Hemingway saying about plaintiff:

> "Yes, that's true, he is dirty and a terrible ass-licker. There is something phoney about him. I wouldn't sleep in the same room with him."

(b) Only 7 pages of the original translation remain in the Doubleday files, according to the testimony of Mrs. Kate Medina, the editor of the Book at Doubleday--the rest was returned to the translator. However plaintiff has had many other pages of the Spanish Edition translated by a reputable translator. On these pages, Puche has Hemingway describing Hotchner as a "sexual deviate" (Spanish edition, p. 209) and Puche characterizes Hotchner (p. 114) "his role of shit-licker to the old colossus was so ostentatious that it almost made one nauseous". Undoubtedly the missing pages of the original translation stated the same thing.

(c) Mrs. Medina was clearly put on notice not merely of malice, but hatred and detestation, of Hotchner by Puche.

(d) Mrs. Medina, because of her concern about Puche's statements re Hotchner asked another person at Doubleday

to read the pages dealing with Hotchner to see if they were libelous.

(e) Bill Austin, another employee of Doubleday, read these pages, urged ten passages be "toned down or eliminated" by Mrs. Medina and then concluded:

> "When looked at together these statements certainly ridicule Hotchner and impugn his reputation and character. As he seems to be an author who has worked in movies and TV, this could be a serious matter.
>
> To make matters worse I doubt whether any of these statements can be substantiated in any way.
>
> From reading the pages you sent, this treatment borders on 'malice', which together with 'reckless disregard for the truth', is a prime element in any libel action."

(f) Mrs. Medina was well aware of the dangerous ground on which she was treading. In a letter, dated August 6, 1973, she wrote to Puche as follows:

> "The third important matter which I'd like to take up with you concerns the possibility of libel to Hotchner in the book. You are certainly entitled to your opinion of Hotchner, and you may very well be right--it seems to our lawyers that it would be a good idea if we would tone down some of your remarks about him, on the off chance that he could possibly bring suit against you. The fact that he is an American author with quite a reputation, and also I seem to recall a professor, it's possible that he would think some of your remarks border on 'malice' (in the legal sense) and that it would be professionally damaging to him, which in a legal sense could come under the legal grounds 'damaging to his reputation and character'. It is, in my opinion, not really awfully important in terms of what you are trying to say in this book to get at Hotchner, one way or the other, very strongly" * * *

(g) Notwithstanding all of the foregoing Mrs. Medina made no effort whatever to find out from Puche whether anyone else heard Hemingway make all the libelous and malicious remarks about Hotchner, made no effort to verify any facts from Mary Hemingway (Ernest Hemingway's widow) or any of

the other persons present in Pamplona, Spain in 1959, didn't read plaintiff Hotchner's book "Papa Hemingway" which describes that time in Spain, etc.--indeed she closed her eyes completely to the truth and published the vitriol which Puche had spewed forth.

6. The foregoing constitutes a sufficient showing of malice on the part of Doubleday and the amendment to the complaint herein should be permitted.

Mervin Rosenman

Mervin Rosenman

Sworn to before me this
28th day of May, 1975.

Simon J. Hausen

SIMON J. HAUSEN
Notary Public, State of New York
No. 60-6807800
Qualified in Westchester County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendant.

74 Civ. 5516 (CLB)

PROPOSED AMENDED COMPLAINT

Plaintiff Demands Trial by Jury

Plaintiff A.E. Hotchner by his attorney, Mervin Rosenman, for his complaint herein alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff is, and was at all times hereinafter mentioned, a resident of the Town of Westport, State of Connecticut.

2. Defendant Jose Luis Castillo-Puche (hereinafter "Puche") is and was at all times hereinafter mentioned, a citizen of Spain and upon information and belief resides in the City of Madrid.

3. Defendant Doubleday & Company, Inc. (hereinafter "Doubleday") is a corporation organized and existing under the laws of the State of New York with its principal place of business in the City of New York, State of New York.

4. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000).

5. By virtue of the foregoing, the requisite diversity of citizenship exists between plaintiff and both defendants to confer jurisdiction on this Court.

6. On or about June 1974 defendant Doubleday published in the United States and other English-speaking countries a book entitled "Hemingway in Spain" (hereinafter the "Book"), written by defendant Puche, a copy of which is deemed annexed hereto as an Exhibit.

7. A. Said Hemingway is Ernest Hemingway, the famous author, sometimes called by defendant Puche "Ernesto", the Spanish version of his first name, or at other times, "Papa".

B. Plaintiff, by virtue of his red hair and freckles, was called by certain of the Spanish-speaking friends of Hemingway "El Pechas", which in English means "the freckled one", or "Freckles".

8. Defendants Puche and Doubleday wrongfully, deliberately, recklessly and maliciously, with intent to injure, defame and destroy the good name and reputation of the plaintiff and to bring him into public scandal and disgrace among his neighbors and among persons engaged in the theatrical, literary, public lecture, motion picture, television industries and the public generally, falsely and maliciously composed and published and caused to be published the Book containing false, scandalous, defamatory and libelous matter, as set forth in paragraph 8, and containing innuendoes and meanings, as set forth in paragraph 9.

9. Said false, scandalous, defamatory and libelous matter as to plaintiff contained in the Book is as follows:

(a) On page 81, beginning on line 40, and continuing on page 82, lines 1-5, plaintiff is described as "riff-raff" and as a "toady" whom Hemingway could not live without but nonetheless secretly despised, as follows:

> "This was yet another point of resemblance between Ernesto and Don Pio Baroja, whose intimates, for the most part, were also an irritating bunch of mediocre, coarse, vulgar sycophants.
>
> Copying the example of the toreros, Ernesto surrounded himself with a sort of entourage of riff-raff. He had many very respectable friends, but was also surrounded by many hangers-on, a whole raft of toadies whom he couldn't do without but nonetheless secretly despised. They were the last remaining traces of a certain ambition of Ernesto's, to be at once a prince and a rogue, and in a certain sense they made him feel invulnerable."

And on page 82, lines 28-31:

> "It was Ordonez, as I remember, who first called him 'Freckles', and the nickname stuck. He pretended not

to mind and was good-natured about everything, but he was such a toady at times that it was sickening."

(b) On page 82, lines 6-11, plaintiff is described as a person who could become a Bible-thumper or a bum, as follows:

"The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum."

(c) On page 82, lines 20-25, plaintiff is described as "two-faced" and a "hypocrite", as follows:

"The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, people such as Juanito Quintana and even Ordonez. Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite. But he put up a very good front as Ernesto's mild-mannered, obedient servant."

(d) On page 82, lines 30-32, plaintiff is described as a speaker of "drivel" and as obsequious, as follows:

"Ernesto rather liked Hotchner's funny stories and put up with his drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears."

(e) On page 82, beginning on line 32, and continuing on page 83 plaintiff is described as "an expert at grinding out publicity in the United States", "an exploiter of Hemingway" and a hypocrite, as follows:

"Hotchner did his best all summer long to make the imaginary duel between Ordonez and Dominguin a real one; in moments when Ernesto was tense or had no one around for company, he was half convinced he was witnessing a genuine 'civil war' in the bullfight world, though I for my part thought the whole affair was a big laugh, and almost everyone else did too.

As an expert at grinding out publicity in the United States, Hotchner knew what a big splash Ernesto's articles were going to make, and was already bragging about what a coup they would be.

I felt very bad about those Life articles, called The Dangerous Summer, to tell the truth, because it seemed to me that the whole farce was beneath Ernesto and that he should have refused to have anything to do with it.

'Freckles' was never open and aboveboard. His mild manner and his air of shy diffidence seemed to me quite a cover-up for his exploitation of Ernesto."



BEST COPY AVAILABLE

(f) On page 161, beginning on line 12, defendants assert that Hemingway didn't trust plaintiff, as follows:

> "Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.'
>
> 'I can see that he's very fond of you,' I replied.
>
> Then, a little while later, he'd whispered, 'I don't really trust him, though.'"

(g) Plaintiff is described as a pimp or panderer to Hemingway, beginning on page 161, line 18, as follows:

> "Remembering what Ernesto had said about Hotchner naturally reminded me of the Irish girl who had come to play a more and more important role in that cast of kooks at the San Fermin fiesta. 'Freckles' had kept whispering in Ernesto's ear, and Ernesto had tried to convince himself that this rather ordinary-looking girl with a mysterious, charming personality could fill the great empty spot in his heart. It was really a rather cruel irony" At one point he took me aside and said, 'You keep eying her.'
> 'Who, me?'
> 'You seem quite taken with her.'
> 'Oh Ernesto! Come on!'
> 'Listen, she's all yours.'
> But all this was merely the opening scene in the opera buffa. Next came the enthusiastic chorus of girl students who kept pretending they were innocent young things. Ernesto said to me: 'Where dd you suppose their maidenheads went?'"

(h) Plaintiff is called a "picturesque rascal and crass opportunist", beginning on page 161, line 39 and continuing on page 162, as follows:

> "Mary Hemingway knew very well what was gold and what was mere tinsel in the bullfight world, what was theatrical show and what was truly courageious and noble. Mary and Ordonez knew the difference between picturesque rascals and crass opportunists. At one point Antonio said to Ernesto, 'I can see that 'Freckles' is a great help to you.'
> And Ernesto replied, 'Freckles' is tops, in my estimation.'
> 'And your 'nigger' is a hard worker.'
> 'He's my bodyguard.'
> 'But what would you be without Mary?' Antonio said slyly. And then he added, 'You must pay her very well.'
> 'I don't think she has any reason to complain', Ernesto replied.
> 'She does more for you than anybody,' Antonio went on. 'What would you be without her.'
> 'It would be absolute disaster,' Ernesto replied. And added, 'What would you be without Carmen?'
> 'A total wreck,' Ordonez said.
> 'We'd both be total wrecks,' Ernesto said.
> 'That's right—we'd both be total wrecks,' Ordonez agreed."

(i) Plaintiff is described as a publicity hound and sponger beginning on page 162, line 14, immediately after the words quoted in subparagraph (h) above, as follows:-

> "I found all these memories amusing, just as it was very amusing to remember Quintana, a great gentleman and one of Ernesto's oldest friends, laughing indulgently; or Matias sitting quietly watching, for all this commotion that Ernesto was the center of struck him as a sort of absurd carnival. Matias knew publicity hounds and spongers when he saw them."

(j) Plaintiff is described as untrustworthy, beginning on page 182, line 41, as follows:

> "At one point, Ernesto turned to me and whispered in my ear: 'Hotchner's a good friend of mine, but he's a sharp customer.'
> I thought Ernesto meant that as a compliment, and I said, 'Yes, it's quite obvious he's an awfully clever fellow.'
> 'Yes, he's terribly intelligent, but he's also out for number one.'"

(k) Defendants state that plaintiff was jealous at Hemingway having other friends, beginning on page 185, line 12, as follows:

> "Juanito Quintana turned up just then, and I noticed that Hotchner took an instant dislike to him. I also noticed that the moment Juanito appeared, Ernesto paid no attention to any of the rest of us, including the women, and the two of them immediately began talking of bullfighting. *** Hotchner's nose was obviously out of joint on seeing what intimate friends the great maestro and this Celto-Iberian whom Hotchner considered a mere matador's peon were***"

(l) Plaintiff is described as looking like a "crafty gypsy" beginning on page 196, line 23, as follows:

> "The most standoffish and wary of the group was 'Freckles' Hotchner, lolling in his chair looking like a crafty gypsy and watching all of us with that strange expression of his, half lustful and half on the defensive. He was laughing and applauding and singing and taking it all in, but despite the easy air of easy camaraderie, it was quite noticeable that he was subtly playing the role of ringmaster. He was very careful to be properly attentive to Mary and extremely polite to her and the other guests, but he kept his eye on Ernesto every minute, watching his every move and listening to his every word, especially when he was approached by journalists or photographers."

(m) Plaintiff is described as having acted as Hemingway's agent for television networks and mass-circulation magazines and being paid

for his services as such beginning on page 196, line 32, as follows:

> "'Freckles' was in complete control of the situation, and I wasn't at all surprised that he had earned lots of money for Ernesto by signing him up with the television networks and mass-circulation American magazines, though I was quite certain Hotchner h[a]d been motivated by something other than worshipful admir[a]tion for a great writer."

(n) Plaintiff is described as motivated by money he was to make by the articles to be written by Hemingway of the rivalry between the two matadors (Dominguin and Ordonez) and their bullfights that summer, beginning on page 203, line 21, as follows:

> "And the two or three times that Ernesto tried to explain to me why the duel between Dominguin and Ordonez was so important, the whole thing left me rather cold. I didn't really understand what all the fuss was about. They had managed to kindle some sort of fire that 'dangerous summer', but I never felt warmed by it. But 'Freckles' was delighted at the thought of how much money they were going to make, what with all the talk of a great rivalry between the two matadors."

(o) Plaintiff is described as a ridiculous exploiter of his [Hemingway's] reputation, beginning on page 318, beginning line 2:

> "Only a woman like Mary could have put up with those two ridiculous figures who hung around Ernesto every minute: Davis the jealous watchdog of his fame and fortune and Hotchner the exploiter of his reputation. Only Mary knew that Ernesto's real riches were intangible, and therefore she allowed him and Davis and Hotchner to do as they pleased. It is possible that his two American friends may have sincerely thought they were looking after his interests and protecting him."

(p) Plaintiff is described as an employee of Hemingway, beginning on page 320, line 12, as follows:

> "'What about Freckles? What would you do without him?' And Hotchner flashed 'Papa' a sly smile, playing the game with him along with the rest of them. Ernesto looked Antonio up and down and said, 'You're right--what would I do without Freckles? But if he's unhappy working for me, you can sign him up as one of your assistants. Maybe he's just now discovering his real vocation--he's thinking of running with the bulls, you know, and maybe he'll turn out to be a serious rival of yours some day.'
> 'We'll try him out, shall we?'"

(q) By describing plaintiff as Hemingway's financial adviser beginning on page 324, line 26, as follows:

"Ernesto sometimes used to leave the door of his room open, so that Hotchner, his financial adviser, and Davis, his major-domo and bodyguard, could come and go as they pleased."

(r) By describing plaintiff as Hemingway's business manager, beginning on page 325, line 10, as follows:

"Davis was an enormous help to him in preparing his text, and Hotchner was always close at hand to help him settle urgent business in the States."

10. By the words and language set forth in paragraph 9 above defendants Doubleday and Puche meant and intended to mean, and were understood by readers of the book to mean, among other things:

(a) That the plaintiff was not a true friend of Hemingway but pretended to be such, and exploited Hemingway in the expectation of plaintiff's personal financial gain;

(b) That plaintiff in his alleged capacity as Hemingway's agent for television networks and mass-circulation magazines, as a financial advisor and business manager, and one who looked out for Hemingway's financial interests or acted as Hemingway's employee, urged Hemingway to writing activities which were inimical to Hemingway's best interest, plaintiff's actions being dominated by expectation of financial gain from Hemingway's writings;

(c) That plaintiff was to share in the money from the publication of the articles called "The Dangerous Summer" published in Life magazine and urged Hemingway to write them even though plaintiff knew the underlying thesis of those articles was a farce;

(d) That Hemingway despised plaintiff, did not trust plaintiff and believed that plaintiff was only motivated by the expectation of plaintiff's financial gain arising out of his friendship with Hemingway;

(e) That plaintiff is a person of low moral character, being riff-raff, a toady, two-faced, a hypocrite, a picturesque rascal, a crass opportunist, who was obsequious and who only pretended friendship for Hemingway;

(f) That plaintiff had the characteristics of a Bible-thumper or a bum;

(g) That plaintiff acted as a pimp and panderer urging Hemingway to have a secret sexual affair with an Irish girl im Pamplona, Spain, even though plaintiff was then a close friend of Hemingway's wife, who was also present in Pamplona.

(h) That plaintiff was jealous of Hemingway's having other friends, the innuendo being that such other friends might jeopardize plaintiff's alleged profitable relationship with Hemingway.

All of the foregoing meanings and innuendos are totally false and defamatory.

11. Plaintiff is known, and enjoys a good reputation, as a writer in various media of communication, having written the following:

A. A play produced on Broadway entitled "The White House" starring Helen Hayes and two plays produced on road tour, one entitled "The Short, Happy Life", starring Rod Steiger, and the other "The Hemingway Hero", starring Gary Merrill.

B. Many television plays, some of which were original dramas for television, including "Last Clear Chance", starring Paul Muni and "The Vanishing Point", starring Peter Lorre and Claude Raines, and some of which were adaptations of Hemingway novels and short stories.

C. A motion picture entitled "Adventures of a Young Man" starring Paul Newman.

D. Two novels named "The Dangerous American" and "Treasure", published by Random House, Inc.

E. Two books of memoirs of plaintiff's childhood, one named "King of the Hill", published by Harper & Row, Inc. and the other, "Looking for Miracles", currently being published by that firm.

F. A national best-seller, in both hard cover and soft cover, of memoirs of his friendship with Hemingway entitled "Papa Hemingway",

published in 1966 by said Random House, which was later published and became a best-seller in England, France, Germany and 15 other countries.

G. Plaintiff was formerly articles editor of Cosmopolitan Magazine and has written more than 300 articles and short stories in such national magazines as Esquire, Saturday Evening Post, Look, Life, Reader's Digest, Cosmopolitan, etc.

H. Plaintiff, on the basis of "Papa Hemingway", was selected by William Morrow & Co. and Bantam Books to write, and is currently writing, the biography of Doris Day; plaintiff has in the past been requested by other publishers to write biographies of other prominent persons. In addition plaintiff enjoys a good reputation as a lecturer, having given approximately 50 lectures in universities and before civic groups throughout the United States, in tours arranged by W. Colston Leigh Inc.

12. At the time of the publication of the Book, both of the defendants knew that the statements complained of in paragraph 9 concerning plaintiff were false, untrue or had serious doubts as to the truth thereof and published said statements in disregard of the truth.

13. By reason of the publication of the Book, plaintiff has been held up to public contempt, disgrace and ridicule; has suffered great mental anguish and has been irreparably injured in his reputation and his activities both as a writer in the various media set forth in paragraph 11 and as a lecturer, and has been damaged in the amount of one million dollars ($1,000,000).

AS AND FOR A SECOND CAUSE OF ACTION:

14. Repeats and realleges each allegation in paragraphs 1 through 7, 9 and 11 above.

15. In addition to the portions of the Book concerning plaintiff as pleaded herein, there is a picture of plaintiff in the Book.

16. Defendants are taking pecuniary advantage of plaintiff's name, photograph and private life to create for profit a fictionalized and dramatic

story, fanciful and sensational in nature, designed primarily and exclusively for entertainment value, and to thrill and amuse the reading public.

17. Plaintiff does not speak the Spanish language and defendant Puche does not have a working knowledge of the English language.

18. Many of the incidents and conversations concerning plaintiff and concerning Hemingway, both those as to which plaintiff is allegedly present according to defendant Puche and on occasions when it is unclear whether or not plaintiff Hotchner was present, never took place, the conversations were never held and all are completely fictionalized by defendant Puche.

19. At the time of the publication of the Book both of the defendants knew, or with the exercise of reasonable care could have ascertained, that the Book is infected with substantial falsified material and that the work was published maliciously with the knowledge of such falsification or with reckless disregard for the truth.

20. Defendants' use of plaintiff's name, picture and purported incidents of his life were and are done in the State of New York and elsewhere knowingly and without his consent, and in violation and contrary to the provisions of Section 51 of the Civil Rights Law of the State of New York.

21. By reason of the publication of the Book, plaintiff has been held up to public contempt, disgrace and ridicule; has suffered great mental anguish and has been irreparably injured in his activities both as a writer in the various media set forth in paragraph 11 and as a lecturer, and has been damaged in the amount of five hundred thousand dollars ($500,000).

WHEREFORE plaintiff demands judgment in the amount of one million five hundred thousand dollars ($1,500,000), together with exemplary damages, together with the costs and disbursements of this action.

Dated: New York, N.Y.
May 28, 1975.

MERVIN ROSENMAN
Attorney for Plaintiff
Office and P.O. Address
41 East 57th Street
New York, N.Y. 10022
(212) 371-3633

44a RECORD FOLDER

MEMO ENDORSED by Judge Brieant dated 6/18/75 & filed in USDC on 6/19/75

Motion Granted, without prejudice to defendant Doubleday's contention that the amended pleading will be shown, on trial, or a Rule 56 Motion, as insufficient in law. The proposed amended pleading shall be served and filed with fifteen (15) days.

SO ORDERED

s/ Charles L. Brieant, Jr.
U. S. D. J.

BUFFALO

Motion granted, until [illegible] Defendant Buffalo to file [illegible] proposed Plaintiff's with the Clerk of this Court, as required by Rule 56 of said Rules. The proposed statement of Plaintiff shall be served and filed within fifteen (15) days.

SO ORDERED

Charles L. Brieant, Jr.
U. S. D. J.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

---

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

NOTICE OF MOTION FOR SUMMARY JUDGMENT

---

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

---

S I R S:

PLEASE TAKE NOTICE that upon the annexed Affidavits of Kathryn B. Medina, sworn to July 29, 1975, William Austin, sworn to July 31, 1975, and Robert P. Marshall Jr., sworn to July 30, 1975, and upon all papers and prior proceedings herein, the undersigned will move this Court before the Honorable Charles L. Brieant in Room 1305 of the United States Court House, Foley Square, New York, New York, on the 10th day of September, 1975, at 10:00 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment in favor of defendant Doubleday & Company, Inc., dismissing the complaint herein upon the ground that the statements complained of in the complaint are about a public figure and were not published by Doubleday with knowledge of their falsity or reckless

disregard for the truth thereof, and are therefore constitutionally privileged, and for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 31, 1975

Yours, etc.,

SATTERLEE & STEPHENS
Attorneys for Defendant
Doubleday & Company, Inc.

By Robert M Lallagy
A Member of the Firm
277 Park Avenue
New York, New York 10017
(212) 826-6200

TO: MERVIN ROSENMAN, ESQ.
Attorney for Plaintiff
41 East 57th Street
New York, New York 10022

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

---

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

AFFIDAVIT

---

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

---

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

KATHRYN B. MEDINA, being duly sworn, deposes and says:

1. I am a Senior Editor of Doubleday & Company, Inc., a defendant in this action. I have been employed by Doubleday since 1965, and I have served as the editor in charge of approximately 40 books published to date, including Hemingway in Spain, which I worked on from 1969 through its publication by Doubleday in May 1974.

Medina Aff't

2. Hemingway In Spain is an English language translation of Hemingway Entre la Vida y la Muerte, written by Jose-Luis Castillo-Puche and published in Spain by Ediciones Destino in 1968. The Spanish book came to Doubleday's attention when it was featured by Robert J. Clements in his column "European Literary Scene" in the April 5, 1969, issue of The Saturday Review. (A copy of Clements' column is annexed hereto as Exhibit A). Samuel S. Vaughan, then the Executive Editor of Doubleday, called my attention to Mr. Clements' favorable reference to Castillo-Puche's book. Mr. Clements, who is the Chairman of the Comparative Literature Department at New York University, referred to Castillo-Puche as "an established Spanish novelist" and "long a close friend of Hemingway."

3. Before Doubleday purchased the English language rights to Castillo-Puche's book, we sent the book out for review and critique by two experienced readers: Ernst Pawel, a writer and critic who has done book reviews for the New York Times and since the 1950's has read books in six languages for Doubleday, and Emile Capouya, who had been a highly respected trade book editor and is now Literary Editor of The Nation magazine. Pawel and Capouya furnished Doubleday written reports (copies of which are annexed hereto as Exhibit B), which were highly favorable to the book and raised no suspicion or doubt about the integrity or accuracy of Castillo-Puche's account. On the contrary, Pawel wrote, "Nevertheless Castillo-Puche's reminiscences . . . have a sort of noble honesty clearly missing in Hotchner"; and Capouya wrote, "It is certainly true that this one will be distinctive from all the rest, full of novel detail, on a plane at once intimate and decent."

4. Doubleday entered into an agreement with Ediciones Destino on May 18, 1970, for the right to publish an English language translation of the Spanish book. Thereafter, I prepared the work for publication, selecting and working with the translator, editing the translation, selecting illustrations and obtaining necessary permissions for illustrations and for the extensive quotations from Hemingway's works. I may have been the only Doubleday employee who read the entire book before publication, besides a copy editor who read it primarily for punctuation, spelling, and other technical details.

5. At no time while I was working on the book did I entertain any doubts about the truth or accuracy of Castillo-Puche's personal observations, including his statements about A. E. Hotchner. To this day, I do not know that anything said about Hotchner in the book is false and I do not have any serious doubts about the truth of any of the statements Hotchner cited in his complaint. The translator, Helen R. Lane, discovered and called to my attention certain inaccuracies in the Spanish work, but these related to incorrect page and source citations of passages quoted from Hemingway's own works and such details as misspellings of English names. This was not surprising in view of Castillo-Puche's Spanish origin and also his explicit disavowal in his Preface (p. xiv of Hemingway In Spain) of any pretense to scholarly precision:

> Instead of amassing a pile of scholarly notes on neat little cards, I have tried to recall our real-life experiences together; instead of searching through the literature on Hemingway for apt quotations, I have tried to bury mine in nostalgic memories . . . I am not a Hemingway scholar; I was his friend . . .

> But I purposely began at the end, because what I have written is not a scholarly biography to be read by college students, but a chaotic, hasty, Hemingwayesque confession.

Further, with the help of Mrs. Lane, all inaccuracies she noted were corrected in the English translation.

6. It is Doubleday's policy for an editor who finds uncomplimentary remarks, however trivial, about a living person in any book he edits to refer these remarks to Doubleday's Contracts Department for review from the standpoint of libel. I have no personal knowledge of the law of libel or invasion of privacy, but following this policy, in July 1973 I referred certain statements about Hotchner contained in the translation to Richard Cariello, at that time Doubleday's Contracts Manager. William Austin, at that time Assistant Contracts Manager, responded that he felt certain of the statements should be toned down, and he and I worked on the passages together to that end. At no time during this process was the truth of the statements ever at issue. In fact, I believed that the substance of the statements should not be changed, as the author's unique view of Hemingway and his entourage, already published and received well elsewhere, should be preserved in the English language edition. What we tried to do is keep the substance while altering the tone of certain statements so that there would be less risk of any objection to the remarks about Hotchner, which we considered to be trivial in nature and insignificant in terms of the rest of the book. I sent these changes to Castillo-Puche, and he approved them, as he did the entire translation. (My memo to Mr. Cariello, Mr. Austin's memo to me, my letter to Castillo-Puche and his response - all referred to above - are annexed hereto as Exhibit C.)

7. I have never met A. E. Hotchner. I know that he is the author of Papa Hemingway, but otherwise I only know about him what I have read in Hemingway In Spain, and what I have learned in connection with this litigation. To the best of my knowledge, no Doubleday employee has personal knowledge of the Hemingway-Hotchner relationship or the events described in Hemingway In Spain.

8. Hemingway In Spain is the first book by Castillo-Puche to be published by Doubleday. I have been informed that Castillo-Puche, who is currently a writer and professor in Madrid, has published more than fifteen books in Spain, from 1953 to the present, and he and his work have been written about in several authologies about contemporary Spanish literature, published in the United States. His current publisher, Ediciones Destino, is considered a highly reputable Spanish publisher. I have personally met Mr. Castillo-Puche twice: once in 1970 when an officer of Destino brought him to our offices to introduce us, and again in 1974 when he was in New York with his daughters. In general, nothing in my own personal association with Castillo-Puche and nothing that I heard about him or his work during the period I was involved with Hemingway In Spain gave me any reason to question his integrity or the reliability of his observations.

Kathryn B. Medina

Sworn to before me this
29th day of July, 1975.

Notary Public

PATRICK F. ADAMS
Notary Public, State of New York
Qualified in [illegible] County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| A. E. HOTCHNER, Plaintiff, -against- JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., Defendants. | Civil Action File No. 74 Civ. 5516 (CLB) |
| DOUBLEDAY & COMPANY, INC., Defendant and Third-Party Plaintiff, -against- EDICIONES DESTINO S. L., Third-Party Defendant. | |

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

WILLIAM AUSTIN, being duly sworn, deposes and says:

1. In July 1973 I was Assistant Contracts Manager of Doubleday & Company, Inc. I was not an attorney, but the Contracts Department regularly served as the liaison between the publishing division of Doubleday and its lawyers, including outside counsel.

2. In my capacity as Assistant Contracts Manager, certain statements about A. E. Hotchner to be published in a book entitled Hemingway in Spain were called to my attention. In a memorandum dated July 17, 1973, I advised Kate Medina, the editor of Hemingway in Spain, that I believed that certain of

Austin Aff't

the statements about Hotchner should be toned down or eliminated. My opinion was based on my belief that these statements could be interpreted as ridiculing Hotchner.

3. I have never met A. E. Hotchner and I have no personal knowledge concerning Hotchner's relationship with Ernest Hemingway. I did not consider that the statements about Hotchner were false, and I did not have any serious doubts as to the truth of these statements. I merely considered that it was preferable to avoid statements about a living person that might conceivably provoke litigation against Doubleday by such a person.

4. I am no longer an employee of Doubleday. Since September 1974 I have been a law student at Fordham University School of Law.

William Austin

Sworn to before me this
31st day of July 1975

James F Rittinger

JAMES F. RITTINGER
Notary Public, State of New York
No. 60-4[illegible]2809
Qualified in Westchester County
Cert. filed in New York & Dutchess Cty.
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

---

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

Civil Action File No. 74 Civ. 5516 (CLB)

AFFIDAVIT

---

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

---

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ROBERT P. MARSHALL, JR., being duly sworn, deposes and says:

1. I am a member of the bar of this Court and am associated with the firm of Satterlee & Stephens, attorneys for defendant Doubleday & Co. Inc. ("Doubleday"). I am fully familiar with all prior proceedings in this action and I make this affidavit in support of Doubleday's motion for summary judgment dismissing the complaint.

2. I have read Hemingway in Spain ("the Book"),

published by Doubleday and written by defendant Jose Luis Castillo-Puche, which contains all the statements quoted in plaintiff's complaint Paragraph 9(a)-(r). I have also read Papa Hemingway ("PH"), published in soft cover by Bantam Books and written by A. E. Hotchner, and I have read the 15 pages listed in the index as containing references to Hotchner in Ernest Hemingway: A Life Story ("Baker") published by Charles Scribner's Sons and written by Carlos Baker.

Although plaintiff claims that the passages quoted in his complaint are "scandalous, defamatory and libelous matter as to plaintiff," a close analysis of these statements shows that such a characterization of them is not generally accurate. Further, a comparison of the statements with information contained in PH and Baker shows many of them to be either true statements of fact of fair comment based on accurate information.

3. Paragraph 9(a) of the complaint (hereinafter these subsections will be referred to as "(a)," "(b)," etc.) contains two totally separate, unrelated passages despite plaintiff's attempt to group them together. Page 81, line 40 ["81:40"] through 82:5 is the conclusion of a section beginning at 78:13. Hotchner is not referred to by name or implication anywhere in this section. Rather, this section describes the scene in a bar which Castillo-Puche visited after Hemingway's death and in which anonymous Spaniards are discussing Hemingway, other bullfight critics and bullfighters. The term "riff-raff" and the phrase "toadies whom he couldn't do without but nonetheless secretly despised," both cited in (a), refer to a particular breed of Spanish bullfight groupie such as Castillo-Puche sees around him at the bar. The context of the reference is made

clear earlier on the same page, at 81:20:

> I knew their kind: people who hang around the bullring, vultures too, in a certain sense, who even take a peck or two at the matador every so often. One of the things I never could understand about Ernesto was how he could be so patient with people like that.

Following 82:5 the text skips a line, Castillo-Puche's indication that he is shifting location, characters and time. These shifts occur approximately every two or three pages throughout the book, as Castillo-Puche moves from place to place and jumps from recollection to recollection. Thus, it would be incorrect to relate someone discussed with a comment made on the other side of a line-skip, expecially as the reference to "riff-raff" is in a section describing Castillo-Puche's surroundings as he thinks while the subsequent mention of Hotchner (which begins at 82:6, quoted in (b)) is in a section reminiscing about Castillo-Puche's last time together with Hemingway and introduces Hotchner as a new character.

4. The second passage quoted in (a) refers to Hotchner's nickname "Freckles," but Hotchner admits this to be a name he was called in Spain in his complaint, Paragraph 7.B. This passage also contains Castillo-Puche's description of Hotchner as "such a toady at times that it was sickening." Whatever Castillo-Puche means here, he is plainly giving his personal subjective opinion of Hotchner, not making a factual statement that can be judged as false or true. Such a statement of personal opinion, especially where the maker has a basis in personal observation for making it, is not proper grounds for a libel action. (See Memorandum of Law in support of Defendant Doubleday's Motion for Summary Judgment, Point VII).

5. In (b) plaintiff complains of being "described as a person who could become a bible-thumper or a bum." As the complete context of this statement shows, Castillo-Puche is metaphorically giving his opinion of Hotchner: a person "who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum." I am not certain what Castillo-Puche means here, but the statement is of such a conjectural and metaphorical nature that it cannot accurately be described as defamatory. This quote also includes, "I had found him rather a wet blanket" (not cited by plaintiff), which again emphasizes that Castillo-Puche is merely giving his opinion, to which he is entitled, in this section (which includes as well (c), (d), (e) and the second part of (a).)

6. Plaintiff complains in (c) that he is called a "hypocrite" and that certain of his behavior is described as "two-faced." Again, these are merely personal opinions of the author, as indicated by the introductory phrases, "the thing I disliked most about Hotchner," and "you could tell that. . ."

7. Plaintiff's complaint in (d) to Castillo-Puche's opinion that Hotchner spoke "drivel" and was "obsequious" is similarly opinion of a non-libelous order.

8. Plaintiff complains in (e) because he is described as "an expert in grinding out publicity in the United States." On its face, there is nothing defamatory about such a statement, and this is even more true given plaintiff's admission that he is the author of five books, many television plays, three stage plays, a movie, and more than 300 articles and short stories. (Complaint Paragraph 11).

Despite the quotation marks, the phrase "an exploiter of Hemingway" nowhere appears in the passage cited in (e), nor does the characterization of Hotchner as a hypocrite. The passage does refer to Hotchner's "exploitation of Ernesto," but this cannot be considered defamatory, especially considering Hotchner's admitted output of Hemingway-derived literary material (see Response to Interrogatories dated March 11, 1975, Paragraphs 8, 9, 12, 14) and his admitted participation in the production of the Life Magazine articles in question (see PH, pp. 261-276).

The numbers are not important, but of the 12 references to Hotchner in the index to Baker (copies of the index and 10 relevant pages are annexed hereto as Exhibit A), five are examples of his exploitation of Hemingway and his works: pp. 492, 531, 542, 549, 553. For example:

> A second visitor was Aaron Hotchner, who was adapting For Whom the Bell Tolls for television. While he was there, Ernest worked most mornings and took his friend afield in the afternoons, teaching him the rudiments of wing shooting. They drove down to Hailey so that Ernest could answer questions about his writing before a group of Catholic schoolchildren. Hotchner kept notes of what Ernest said and sold them some months later to This Week magazine.
> --Baker, p. 542

9. Plaintiff complains in (f) about a statement made by Hemingway to Castillo-Puche. Not only is this merely a statement of a personal opinion, it is the opinion of Hemingway, not Castillo-Puche.

10. The statement quoted in (g) does not describe plaintiff as a pimp or panderer to Hemingway. Half of the passage quoted (the conversation between Hemingway and Castillo-Puche) in no way involves Hotchner, and the inference plaintiff draws is not a fair one. In fact, both Baker (p. 547) and PH

(p. 234) contain descriptions that generally lend credence to this scene:

> In fact his [Hemingway's] behavior at Pamplona and in the weeks that ensued was aggressively adolescent. Evidently believing, as earlier with Adriana, that a miraculous renewal of youth could be achieved by association with a nineteen-year-old girl, he adopted Valerie Danby-Smith as his secretary, insisting on having her at his elbow during meals, at the bullfights, and in the car. --Baker, p. 547

11. Plaintiff's claim in (h) that he is called a "picturesque rascal and crass opportunist" shows how far plaintiff is stretching in his complaint or reveals with what little care plaintiff has read the book. The full sentence is "Mary and Ordonez knew the difference between picturesque rascals and crass opportunists." In this context, one person cannot be both a "picturesque rascal" and a "crass opportunist." Like "gold" and "tinsel," these categories are posited as opposites. Moreover, there is no implication that Hotchner falls within either of these two groups. In fact, the remainder of this passage is complimentary to Hotchner - i.e., "'Freckles' is tops, in my estimation." And the people discussed at the same time - Mary, Davis (the "nigger"), Quintana and Matias - are all part of the "gold." Castillo-Puche's "tinsel" comes at the end of this section, 62:23-32: ". . . all the parasites in the bullfight world. . .the exploiters of bullfighters, the bull-butchers, the fawning fans of the Nobel Prize winner," etc.

12. There is no reference whatsoever to Hotchner in the passage quoted in (i). The "publicity hounds and spongers" are part of the tinsel discussed by Castillo-Puche in this paragraph (see Paragraph 11).

13. Plaintiff complains in (j) that he is described as untrustworthy but this word is never used. Rather, the cited passage contains Hemingway's comments to Castillo-Puche that Hotchner is "a sharp customer" and "also out for number one." There is nothing defamatory about either of these references; who is not "also out for number one"?

14. Plaintiff's characterization of the passage cited in (k) is not a fair one. The passage does include the statement that "Hotchner's nose was obviously out of joint," but this is again merely a figurative description based on Castillo-Puche's personal observation.

15. Castillo-Puche's description of Hotchner as "lolling in his chair looking like a crafty gypsy" is merely a picturesque description and not libelous in any way. Cf. Baker, p. 524: "Ernest. . . joked with [Hotchner] about his freckled face and gangster slouch."

16. Plaintiff complains in (m) that he is "described as having acted as Hemingway's agent for television networks and mass-circulation magazines and being paid for his services as such." First, the passage does not say Hotchner was a paid agent. It says, "he had earned lots of money for Ernesto by signing him up with the television networks. . ." Second, there is nothing defamatory about saying one has made money for another. Third, these statements are admittedly true. See PH, pp. 157, 163, 178, 206-7, 243, 261, 267, 269, 270, 272, 273, 276, 283, 293. Or, to quote from Baker:

> Aaron Hotchner wrote to say that he had concluded a big deal with Buick and CBS for several 90-minute shows adapted for television from Ernest's short stories. Aughor and adapter would again split fifty-fifty. --p. 549

> Hotchner had been negotiating with Twentieth Century Fox for a film play, The World of Nick Adams, based on his television adaptations of some of the stories, strung together in a pseudo-biographical sequence. Ernest was dissatisfied with the preliminary offer of $100,000 and insisted that Hotchner hold out for $900,000. --p. 553

17. Plaintiff complains in (n) that he is described as "motivated by money he was to make." It is patently absurd to contend that a professional writer is not motivated by money he is to make, and in any case there is nothing defamatory about such a statement.

18. Plaintiff complains in (o) that he is described as a "ridiculous exploiter of [Hemingway's] reputation." Again, all we have here is Castillo-Puche's opinion dressed up in his somewhat colorful literary style plus a misquote by plaintiff ("ridiculous" has nothing to do with "exploiter"). The commercial adaptation of Hemingway's works admittedly done by Hotchner is a sufficient basis for referring to Hotchner as "an exploiter."

19. The passage complained of in (p) is nothing but a jest between Hemingway and Ordonez. The conversation begins at 320:1 as follows:

> But since Ernesto seldom confided in him, all Antonio could do was crack the same tired old jokes. I remembered one of their typical conversations: . . .

The quoted passage refers to Hotchner as "playing the game with him along with the rest of them." Thus, Hemingway's statement about Hotchner, "if he is unhappy working for me," cannot be taken, as plaintiff tries to, as meaning that Hotchner is an employee of Hemingway. Even if it is so taken, such a statement is not defamatory. And cf. Baker's description of the relationship in 1949: "Ernest was already promoting a trip to France for

his young friend [Hotchner], 'Wish we had him on our team,' he wrote. 'Maybe we have.'" p.477.

20. Plaintiff complains in (q) that he is referred to as "Hemingway's financial adviser." This is not defamatory. If any implication is to be drawn from such a statement, it would be that Hotchner helped Hemingway and was trusted by Hemingway, clearly complimentary implications. Examples of financial discussions between the two are contained even in PH, pp. 262-3, 270, 273, 283, 293, 313.

21. Plaintiff complains in (r) about a passage saying that Hotchner helped Hemingway "settle urgent business in the States." Again, this is non-defamatory on its face, especially in light of the admissions cited in Paragraph 21.

22. Finally, plaintiff tries to imply that Castillo-Puche had no basis for making the quoted statements about Hotchner and Doubleday should have recognized the alleged falsified material because Castillo-Puche does not have a working knowledge of English while Hotchner does not speak Spanish (Complaint Paragraph 17). None of the quoted passages, however, describe anything said by Hotchner or describe anything said in the English language. The conversations described are between Hemingway and Castillo-Puche or between Hemingway and Ordonez and all presumably took place in Spanish. Any language barrier that may have existed between Hotchner and Castillo-Puche was no obstacle to Castillo-Puche's observation of how Hotchner looked and acted, or to Castillo-Puche's recollection of comments that Hemingway made to him in the privacy, vis-a-vis Hotchner, of the Spanish language.

23. In summary, the statements complained of in this action either do not refer to plaintiff Hotchner, are not

defamatory, or represent fair comment, based on Castillo-Puche's personal observations and supported by admissions in plaintiff's own published account and by other independent, authoritative accounts of the Hemingway-Hotchner relationship. For this reason, as well as the constitutional privilege accorded publishers of statements about public figures, defendant Doubleday's motion for summary judgment should be granted.

Robert P. Marshall, Jr.

Sworn to before me this
30th day of July, 1975.

Notary Public

NANCY G. COLLINS
NOTARY PUBLIC, State of New York
No. 31-4607777
Qualified in New York County
Commission Expires March 30, 1977

how he felt about all parts of the Veneto, including even Pordenone. He was already talking of another trip to Italy, leaving in November on the *Ile de France*, calling in at the Ritz in Paris, and then descending to the Veneto, where he could revise the book on weekdays and shoot ducks on Sundays. Once finished, the novel would be serialized in *Cosmopolitan* magazine, largely because of Ernest's liking for young Aaron Hotchner, whom he now called "one of the nicest kids I have ever met." Hotch was coming to Cuba with his wife for a vacation early in September. He touched Ernest's heart by insisting on staying at Varadero to avoid interrupting the master at his work. When he arrived on the fifth, Ernest lost no time in getting him aboard the *Pilar* and handing him the early chapters of the novel. As he had done with Buck Lanham in 1945, he leaned over Hotchner's shoulder while the reading went on, breathing into his ear, offering marginal comments, and laughing heartily at some of the passages which he thought were witty. Hotchner found it hard to concentrate, and covered his embarrassment by asking to take the pages away to be read at greater leisure. The upshot of the visit was happy enough, since Hotchner virtually became Ernest's agent in the negotiations for serialization with the senior editors of *Cosmopolitan*.

A week after Hotchner's departure, Ernest settled at last on a title: *Across the River and into the Trees*, a slightly abbreviated version of the dying words of Gen. Stonewall Jackson. He borrowed $10,000 from Charles Scribner and sent Mary off to see her aging parents in Chicago as well as to buy a mink coat—"to make up to her," he explained, "for how shitty I have been when jamming in the stretch." The racetrack metaphor was fairly just: he computed his wordage at 13,441 between Sept. 5th and 29th, in spite of time off for two fishing trips. While Mary was away, he did his best to keep his bad-boy reputation. A new whore whom he nicknamed Xenophobia had recently appeared in Havana and he sent his retainer, Roberto Herrera, to bring her out to the Finca for dinner. Some days later he paid a nonprofessional call on Leopoldina, who was just his age. They exchanged the local gossip and told each other what Ernest described as "sad stories of the death of kings." Afterwards he set Roberto to counting the words of the manuscript. There were roughly 45,000 and Ernest believed that another 15,000 would finish the job. "Am trying to knock Mr. Shakespeare on his ass," he told Scribner. "Very difficult."

When Mary got back early in October, Ernest was already talking of completing the novel by November 1. All the time he had ever spent in Italy, he wrote Buck Lanham, was now "paying off doubled and redoubled." He said that his hero Cantwell was a composite portrait of three men: Charlie Sweeny, the former soldier of fortune; Lanham, the hard-driving West Pointer; and most of all himself as he might have been if he had turned to soldiering instead of writing. What he wanted to get was a picture of a highly intelligent fighting man deeply embittered by experience. The background, as always, was love and death. In the foreground stood the embattled hero, the eternal type of

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he had ever tried before. He wished to surround her with a Venus-like aura, like a goddess risen from the sea to become the presiding spirit of the ancient city of Venice. He had borrowed her name from the Renata Borgatti whom he and Hadley had befriended at Cortina in 1923, but was fully conscious that the name itself meant "reborn." What he wanted her to represent was the spirit of youth, reborn in the mind of his fifty-year-old Colonel. She could stand for the freshness, innocence, courage, and idealism that both Ernest and Colonel Cantwell had enjoyed in the days before war had aged and embittered them. In the passage of lovemaking under an O.D. blanket in a wind-swept gondola, Ernest was indulging himself in the same sort of vicarious eroticism which he had followed in *A Farewell to Arms*. Adriana had never been—would not in fact ever be—alone in a gondola or in his room at the Gritti Palace Hotel with Ernest. But this did not prevent him from dreaming his dreams.

Apart from the symbolic meanings he was seeking to convey, the relationship between Renata and the Colonel was curiously comparable to that of the lovers in *The Garden of Eden*, Ernest's long and emptily hedonistic novel of young lovers in the old days at Grau-du-Roi and the Costa Brava: page after page of their talk was filled with inconsequential commentary on the color and condition of their hair, the food and drink they were always consuming, and the current state of their suntanned skins. Something of this carried over into the food-drink-and-lovemaking passages in *Across the River*. The atmosphere was darkened, however, by a strange psychological malaise, as if Ernest were using the pages of his novel as the equivalent of a psychiatrist's couch. Even the bold talk in his letters about knocking Mr. Shakespeare across the ring and into the front seats might have been construed as more of the same: an exercise in self-assurance to restore his flagging courage.

The gall inside him came out in various ways, most notably in the mocking remarks which he dictated to Nita Jensen for the Roosevelt Birthday Memorial Concert to be held at the Waldorf Astoria Hotel in New York on January 30, 1950. Averell Harriman had written to ask his assistance. Ernest benignly promised to help if his work on the novel allowed him to do so. But it was a promise he meant to ignore. The "dedication," which happily was never sent, spoke with the utmost scorn of the rich and spoiled paralytic who had changed the world and then died of overwork.

By November it was clear that Ernest would not finish his novel before leaving for New York and Paris. Nita Jensen typed out some of the opening chapters for Hotchner to show to Herbert Mayes, the new editor in chief at *Cosmopolitan*. Ernest was already promoting a trip to France for his young friend. "Wish we had him on our team," he wrote. "Maybe we have." Lillian Ross had lately suggested doing a profile of Ernest. "I probably couldn't talk good enough to make it worthwhile," he told her. "But it would be fun to do it if you did it." On the eve of departure, the usual air of mild desperation overhung the Finca. Mary saw to the packing of fourteen pieces of luggage.

write it and had even hoped at one time that he would never have to set it down. The reason for his dread was not entirely clear. Perhaps he meant only that it was so hard a task that he doubted his ability to bring it off. But there was a hint in what he said that the story was a true one—indeed, one might have inferred from his words that it had actually happened to him.

As he watched his pile of manuscript building up each day, Ernest was struck by a heartening sense of accomplishment. It was partly engendered by the fact that several of his pieces were now appearing in magazines. The March number of *Holiday* contained "The Good Lion" and "The Faithful Bull," the Venetian fables he had written in January, 1950, for Adriana's small nephew, Gherrardo Scapinelli, and for the daughter of Carlo Di Robilant. *True* magazine for April included "The Shot," his account of the pronghorn antelope hunt in Idaho. His introduction to Lee Samuels's checklist of his works was already in proof sheets at Scribners and scheduled for publication in July. He had done yet another preface which was now in print, this one for François Sommer's picture book of African animals, *Pourquoi Ces Bêtes Sont-elles Sauvages?*

All these, of course, were minor items. The major achievement of that spring, as he well knew, was the Santiago story. It had leveled out finally at 26,531 words. As he had done with other work, he began testing its effect on his friends, assuring and reassuring himself that they would find it as moving as he did. When they came down for a visit late in February, he handed it to Charles and Vera Scribner, and also to Hotchner, who had flown over to discuss his proposal to make some free-lance money with a ballet version of "The Capital of the World." Among the other readers were his sister Ura and her husband, Air Marshal Lord Tedder and his lady, Alfred Rice the attorney, and Ernest's wartime friend Bill Walton. They all agreed, as he put it, that the book contained a "mysterious quality" not visible in his other work. In April he handed a copy to his Norwegian publisher, Harald Grieg, and sent off another to Baker, the Princeton professor. Baker obeyed his instructions to read and return it without showing it to anyone else, and told Ernest that Santiago reminded him of King Lear. Ernest said that *Lear* was indeed a wonderful play, but added that the sea was already "quite old" when Lear was king.

He was almost as enthusiastic over his current novel about the pursuit and near capture of the Nazi submarine crew. On May 17th, after two and a half months of work, he declared it finished. It followed chronologically the novel he had finished on Christmas Eve and contained many of the same characters. He told Charlie Scribner that it was similar in quality to the story of Santiago, although the action was very fast and the dialogue very exact. At 45,000 words it was also nearly twice as long. To celebrate its completion and the arrival of a substantial royalty check from Jonathan Cape, he ordered "three big wonderful steaks from the posh American food place" in Havana.

with Rupert Bellville to attend the *feria* of the week after Easter. Adamo came down from Udine to drive Ernest to Spain in the Lancia. Aaron Hotchner, whom Ernest's letters called "Hotch (darling)," was summoned from Holland to make the trip as companion and listener. He arrived on May 2, glorying in yet another opportunity to travel with his benefactor. Ernest gave him an affectionate *abrazo*, joked with him about his freckled face and gangster slouch, put him up at the Gritti Palace, and fed him attentively at Harry's Bar. Hotch was a fine companion, he told Adriana, with "such a loveing and learning mind." On the evening of May 5 he took Hotch along to the Ivancich palazzo for a dinner of hamburgers, American style. Afterwards there was a farewell party in Ernest's suite at the Gritti.

Next day they set out for Milano along the Autostrada. It was nothing like the romantic view of northern Italy that Ernest had been longing to see. The banked advertising billboards along the route struck him as "vulgar and awful." He stuffed a pillow behind his aching back and was assailed by waves of nausea whenever he shifted position. But he regaled Hotchner all the way with fictitious anecdotes and a great variety of other misinformation about his past. At the Hotel Principe in Milano, they paid a call on Ingrid Bergman, who was currently appearing as Joan of Arc at the Teatro Scala. She received Ernest with affectionate regard, and he reciprocated as well as his pains would permit. But he was barely polite to her consort, Roberto Rossellini, a short man with a fringe of untidy hair and a sad Italian face whom Ernest scornfully described as a "22-pound rat."

The second day's drive through the Piedmont by way of Torino and Cuneo and down to Nice was more to Ernest's liking. He gazed with pleasure at the May-time green of the valleys and the snow-covered Alps. But he barely escaped being crushed by a crowd of worshippers at Cuneo, where a salesgirl recognized him while he was buying a bottle of Scotch. He got back to the car with the help of a squad of soldiers, badly shaken by the experience. When they reached the Hotel Ruhl on the Promenade des Anglais in Nice, he got a barber to disguise him by shaving off his beard. On the 9th of May, Adamo, wearing one of Ernest's Masai-pink jackets, sent the Lancia whistling to Aix-en-Provence, and on the 10th to Carcassonne. The weather was cold and foggy through Biarritz to San Sebastian, where they paused to pick up Juanito Quintana. He was working for a wine company and living in penury in a walk-up flat, and was happy to join them for the drive to Madrid. Again they stopped briefly at the cathedral of Burgos, where Ernest knelt down painfully and bowed his head in prayer. At a stone bridge outside the city they drew up while Ernest solemnly assured Adamo that this was the famous bridge of *For Whom the Bell Tolls*.

Madrid was crowded for the San Isidro festival, but Ernest had a reservation at the Palace Hotel, which was at least as sumptuous as the Ritz in Paris. When Mary and Rupert Bellville arrived from Seville, he insisted on attending the bullfights despite the wretched weather. He talked with a tall thin young

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he complained of poor sight in his left eye and deafness in his left ear. He said nothing of these afflictions to Leland Hayward and Peter Viertel, who arrived on June 1 to reactivate plans for the film of *The Old Man and the Sea.* As he had done with Spencer Tracy, he took Viertel on a tour of Cojimar and tried to give him some insight into the art of fishing by catching three white marlin. Viertel proposed to complete the film-script by September 1, when the camera crews would arrive to make the preliminary fishing sequences. After the departure of Viertel and Hayward, Ernest discovered that he had lost another four pounds. His blood-pressure reading had dropped to 158 over 68, and he was feeling better than he had at any time since Africa.

Yet he was never able to count on a life free of adversity. On St. John's Day came the sudden death of Don Andrés, who had suffered with a bad heart for two years. A week later Ernest crossed to Key West with Mary to see to the repair and rental of the house on Whitehead Street. Aaron Hotchner flew down for the Fourth of July to discuss his latest scheme, a series of dramatizations of Ernest's short stories. He was shocked to see how much Ernest had aged since their last meeting in Madrid in 1954. So were Bill Walton and Gianfranco Ivancich, who helped Ernest celebrate his fifty-sixth birthday. "Shit-maru, how the years go," he wrote Patrick next day. "But we have good fun and that is more than most people have."

In August the cameramen and technicians arrived to make some fishing sequences for *The Old Man and the Sea.* Ernest's strength was apparently restored and his arrangements were elaborate. He hired four "old-style" small boats from Cojimar, and used the *Pilar* and Mayito's *Tensi* to converge on the smaller boats whenever there was a strike. They worked every fair day for the first two weeks in September, though the sea was extremely rough. On the first day Ernest boated two large marlin, and took pride in long steering sessions on the flying bridge, fortifying himself with sips of tequila. It was a large operation, with fourteen men in the camera crew, besides Ernest, Gregorio, and Mayito's cousin, Elicín Argüelles, a tireless sportsman. Ernest supplied ice, bait, and fishing gear, observing gleefully that it was like organizing a safari on the sea.

As his trainer for this strenuous venture, he imported his old friend and boxing coach, George W. Brown. Brown gave him postoperative rubdowns and delighted him with unfailing solicitude. "Did they hurt you, Ernie?" George would say. "How's the back? Lie down like you were going to sleep. Make him a drink, René. What kind of liquor going to hurt you, boy? Hold it up to his mouth, René. Drink it slow, Ernie. Just relax good, and let me get the legs loosened up." Ernest reveled in such treatment, and called on George to be one of the witnesses to his will, which he laboriously wrote out in blue ink on a sheet of onionskin paper and dated September 17th. It gave his whole estate to Mary, who was also named executrix. The fourth clause stated that "I have intentionally omitted to provide for my children now living or for any that may be born after this will has been executed, as I repose complete con-

rounded by a backslapping, handshaking crowd of admirers. In Cody that night they pulled up at a motel which looked clean and comfortable. Ernest balked. Something about the place spooked him; he stuck to his suspicion so firmly that they had to go to another.

They were warmly received by their friends in Ketchum: Taylor Williams, Pappy and Tillie Arnold, Clara Spiegel, Chuck and Flossie Atkinson, Forrest MacMullen, Don Anderson, and Dr. George Saviers. Old Colonel Williams was in poor health and deafer than ever. Dr. Saviers had been stationed for five years at Sun Valley Hospital, and Don Anderson, a tall quiet man of thirty-six, was in his fifth year as sports director at Sun Valley Lodge. The Atkinsons had established a new shopping center and motel on the site of the old gamblers' haven, the Christiania Casino. Nearby, in the center of town, stood the log house that the Arnolds had found for the Hemingways. They settled in to await the opening of the shooting season. Ernest complained of fatigue from the trip, and they were all shocked by the change in his appearance and manner. But his spirits revived during one of Tillie Arnold's chicken dinners. He shucked off his jacket, picked up their large Siamese cat, waltzed it around the room, and amused the company by singing off-color parodies slightly off-key. He was in no hurry to get to work and he was still being careful about his diet. But he presently said that the clear dry air was making him feel "like the best of the old days."

After the Bruces had gone, he began to hunt every day. For two years after the Butiaba crash he had not been able to swing with a bird. Now his reflexes were fast and his shooting eye vastly improved. With Don Anderson, whom he still called "The Kid," and Forrest MacMullen ("The Duke"), he spent dozens of hours stalking birds in the meadows and along the watercourses. Don was more certain than ever that, except for Taylor Williams, Ernest was the best field shot he had ever seen. By Thanksgiving, he had achieved six doubles and two triples on green-head drakes. Although it was widely said that the spring bird hatch had been excellent, neither of the Hemingways was prepared for the great abundance of pheasants, Huns, and chukars. They were as thick, said Ernest exultantly, as the quail used to be in the flats around Piggott.

Despite his contentment with his Ketchum "family," he welcomed three visitors in November. One was his Polish translator, Bronislaw Zielinski, to whom he took at once, calling him "Old Wolf" and "The Magnetic Pole." The upshot of his visit was Ernest's offer of a $1,000 prize and the royalties from the Polish translation of *Green Hills of Africa* to the Pole who wrote the best novel in 1959. A second visitor was Aaron Hotchner, who was adapting *For Whom the Bell Tolls* for television. While he was there, Ernest worked most mornings and took his friend afield in the afternoons, teaching him the rudiments of wing shooting. They drove down to Hailey so that Ernest could answer questions about his writing before a group of Catholic schoolchildren. Hotchner kept notes of what Ernest said and sold them some months later

to *This Week* magazine. The third visitor was Gary Cooper, still a devotee of Sun Valley after twenty years. One day of heavy snow, he brought over a smoked goose, and they spent an afternoon of quiet talk before the fire, eating the goose and drinking Chablis. Cooper said that he had yielded to his wife's persuasion and become a Catholic. Ernest was sympathetic. He had done the same thing thirty years earlier, and he still "believed in belief."

The situation in Cuba was a constant worry. He tried to forget it by rewriting parts of the Paris sketchbook and revising three chapters of *The Garden of Eden*. But fears filled his mind that his adopted island might soon be gripped by civil war. He was greatly relieved early in January when Fulgencio Batista fled to Ciudad Trujillo while the forces of Fidel Castro took over the capital. Herbert Matthews wrote to say that the Finca was safe. René Villeréal, reached by telephone, said that all was well, though food was very scarce. A munitions explosion at Guanabacoa had broken a few of the Finca windows and damaged part of the roof. Jaime Bofils, a small and smiling Cuban whom Ernest had known for years, telephoned reassuringly to say that he had been appointed to the new provisional government and that he was personally protecting the estate. Another welcome piece of news was that Dr. Herrera had known Fidel Castro during his medical-school days, and the officer in command of the Havana garrison was a native of San Francisco de Paula who had formerly played on the village ball team when Ernest was pitcher.

There was, of course, much bloodshed. A dozen young men from San Francisco de Paula and the neighboring village of Cotorro had been arrested, murdered, and cast into ditches by Batista's secret police. On the other hand, the Batista sergeant who had shot the dog Machakos in August had been hanged in November "with the usual mutilation" by some of the boys from Cotorro. As an old student of revolutions, Ernest took the position that any change in Cuba was better than none. Batista's gang had looted the rich island naked, and Ernest estimated that he had made off with $600 to $800 million. If Castro could run a straight government, it would be great, but he was up against a hell of a lot of money. Some of the United States interests like United Fruit were well and responsibly administered; others had made "terrific deals" with Batista and were "very un-OK." "I wish Castro all luck," said Ernest. "The Cuban people now have a decent chance for the first time ever." His only regret was that he had not been on hand to see Batista pull out.

When their lease on the Heiss house expired in mid-December, they moved to another owned by a family named Whicher. It was still unfinished, with a tarpaper exterior and plywood floors, but the wealth of housekeeping gadgets delighted Mary: baseboard heating that kept them warm even in subzero weather, a deep-freeze unit which they promptly filled with game birds, and a large television set that hung from the ceiling. All the Ketchum family began dropping in to watch the Friday-night fights and the professional football games on Saturdays. Ernest liked it so well that he began to look for a house

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they "averaged something over three hours' sleep at night to the pounding of the war-drums of Navarre." Antonio was there, though only as a celebrant. Juanito Quintana was down from San Sebastian. Annie Davis and Mary came up from Málaga. Aaron Hotchner had caught up with Ernest at Alicante on June 28th. Dr. Saviers and his wife Pat had come over from Sun Valley as Ernest's guests. A nineteen-year-old girl named Valerie Danby-Smith introduced herself into the group as a journalist. During one night of revelry, Ernest and Antonio, accompanied by Hotchner, "captured" two pretty American girls, who dutifully accepted "imprisonment" next day at Ernest's table in the Bar Choko.

Part way through the fiesta, the group began picnic and swimming trips to the Irati River above Aoiz, the magical region that Ernest had discovered in 1924. He feared that it would be "all cut up and destroyed" like so many other places he had loved. Instead he found that "the last great forest of the Middle Ages" was still intact, with a stand of tall beeches and a "century-old carpet of moss." Sipping vin rosé and nibbling at the picnic lunch, he sat with his back to one of the trees, "as happy as I had ever been." He did not seem much concerned that Mary was obliged to hobble painfully with a cane, having broken a toe on the slippery stones of the riverbed. In fact his behavior at Pamplona and in the weeks that ensued was aggressively adolescent. Evidently believing, as earlier with Adriana, that a miraculous renewal of youth could be achieved by association with a nineteen-year-old girl, he adopted Valerie Danby-Smith as his secretary, insisting on having her at his elbow during meals, at the bullfights, and in the car. During one of his stopovers in Madrid, Dr. Madinaveitia had given him a clean bill of health, and he seemed to be determined to make the most of it.

His sixtieth birthday coincided with Carmen Ordóñez's thirtieth. Mary had spent more than a month in planning a gala celebration at La Consula. "We had a great mixture of people," she wrote afterwards, "everybody from David Bruce and Evangeline and Miguel Primo de Rivera and Buck Lanham to pretty American girls, an Englishman who's a champion guitar-player of cante hondo, Millais by name . . . and Spaniards of various ranks." Among those she did not name were Gianfranco and his wife Cristina, who drove in with Ernest's brand-new Lancia; Carmen and Antonio; the Maharajah of Cooch-Behar and his red-headed lady; Dr. Saviers and his wife; Peter Buckley and his wife; Valerie Danby-Smith; and Aaron Hotchner. There was an elaborate dinner on the wide balcony on the second-floor front, with a cake and gifts and many toasts. An orchestra played and there were flamenco dances. A small shooting gallery was erected in the grounds, and later there were fireworks. The party lasted all night, and the last celebrants left after breakfast on the 22nd.

But the occasion was not altogether golden. Dr. Saviers was treating Ernest for a kidney disorder which had developed in Pamplona, and his bedroom at La Consula was filled with glasses and bottles containing urine samples.

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Madrid. The jinx had caught up with Antonio, who had been gored at Palma de Majorca.

The *mano a mano* contests between Antonio and Luis Miguel were grist to Ernest's mill. He had contracted to do a bullfight article for *Life* magazine, and was keeping notes for the purpose. The climax of the duel was reached at Málaga in the middle of August when both matadors ignored their bandages in a magnificent display of skill and courage. Then bad luck returned. A week later in Bilbao, Dominguín was gored so seriously that he was obliged to retire for the rest of the season. He was back in the Sanatorio Ruber once again when Antonio, fighting at Dax across the French border, sustained a foot injury serious enough to put him in the hospital at San Sebastian.

Ernest stayed by his friend's side until the worst of the pain was gone. Then he bade him a tender good-bye and set out for Madrid in the new Lancia, with Valerie beside him and Davis driving. Just outside Aranda de Duero south of Burgos the right front tire blew out. The car mowed down five stone slabs along the shoulder of the road. No one was hurt, but the whole front of the car was demolished. They left it in Madrid and flew back to Málaga. Next day Ernest admitted sadly that he had had enough of spectator sports; he had become too much involved in the fortunes of Antonio: it was as nerve-shattering as "being married to an alcoholic." Mary was glad to have her husband back again unharmed. "Papa Sportif" could be amusing. But she preferred him when he was "quiet, contemplative, and my friend."

The revels, such as they were, had now come to an end. Antonio was debarred for a month after a dispute with bullfight officials. Aaron Hotchner wrote to say that he had concluded a big deal with Buick and CBS for several 90-minute shows adapted for television from Ernest's short stories. Author and adapter would again split fifty-fifty. Mary was eager to get home to Cuba. She had suffered all summer with everything from bad colds to humiliation. But Ernest seemed determined to stay on at La Consula through the middle of October. Nothing would serve but that he must begin his bullfighting article while he was still inside the magical borders of Spain. It was October 10th before he got down to work. Except for the short-story preface, he had written nothing all summer beyond a few letters dictated to Valerie. On his opening day, he produced 541 words and 845 the next. He was recalling the magical days of 1953 when he had come back to Spain for the first time since Franco's victory in 1939. By October 15th he had done 5,000 words and was only just begun.

Over in Italy, Ezra Pound stood uncertainly upon the brink of his seventy-fourth birthday. "In happier days," he wrote Ernest, "I had yr monumental cheque sunk in plexiglass as a token of yr magnanimous glory. Now too damn valuable as souvenir to leave on the table for paper-weight as intended." Ezra was feeling the effects of advancing years. "Old man him tired," said he. But Ernest at sixty was already spoiling for more fun. Anton[illegible] and Carmen had

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Three weeks later he summoned Aaron Hotchner to help him cut the typescript. The heat was relentless and there were heavy rains each afternoon. With infinite labor, they managed to delete some 50,000 words. Hotchner carried the abridged version back to New York. Even the abridgment was more than twice too long, but Ed Thompson, the managing editor, agreed to buy a selection of it for $90,000, with another $10,000 for reprint rights in the Spanish language edition. It was now called "The Dangerous Summer," an allusion to the *mano a mano* combats of 1959. Although the piece was ostensibly finished, Ernest convinced himself that he must return to Spain to gather up loose ends and participate in what remained of Antonio's grueling schedule. "Antonio wants me with him all the time," he said, "as we are a winning combination." Having to leave him the preceding October had been "rough." Now he wanted to "hook up" with his hero once again.

The season was far advanced when he resolved to go. Hotchner prepared the apartment on 62nd Street for Mary's occupancy. Late in July, with Valerie, the Hemingways crossed to Key West, staying at the Santa Maria Motel in rooms secured by Otto Bruce. They had brought along most of Ernest's manuscript material, and Bruce shipped it to Ketchum. Ernest was almost psychotically concerned about Valerie's alien status, since she had come to Cuba in February on a temporary American visa and had not bothered to renew it. He pestered the Office of Immigration in Key West with assurances that she was only a visitor. Then he flew on to New York, leaving the women to come by train.

In marked contrast to his sixtieth, Ernest's sixty-first birthday came and went like a shadow. He seldom left the apartment, and set up a card table in a corner of the living room to serve as an office. Charles Scribner conferred with him there. Among his few visits outside were a trip to an eye doctor and a lunch at Toots Shor's with Lenny Lyons, Jimmy Cannon, and Hotchner. Hotchner had been negotiating with Twentieth Century Fox for a film play, *The World of Nick Adams*, based on his television adaptations of some of the stories, strung together in a pseudo-biographical sequence. Ernest was dissatisfied with the preliminary offer of $100,000 and insisted that Hotchner hold out for $900,000. If this figure suggested delusions of grandeur, the depressive phase was very close. On July 31st he wrote his son Bumby that he was not in good shape and that his eyes were bothering him badly. He added that he wished he did not have to go to Spain at all.

He did not need to go and he should not have gone. But he kept insisting that Antonio needed him. After several postponements, he got aboard the overnight TWA jet for Lisbon and Madrid. His seat companion was a Chicago attorney named [illegible]tner, with whom he had once corresponded about the release of Ezra Pound. Like Turnbull in October, Kutner was astonished to discover that this unsure and quiet man was not the "robust, virile, aggressive" hero of popular legend. When the plane reached Madrid, Ernest was

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

STATE OF NEW YORK )
)ss.:
COUNTY OF NEW YORK)

A.E. Hotchner, being duly sworn, deposes and says:

1. I am the plaintiff in this action and I make this affidavit in opposition to the motion of defendant Doubleday & Company, Inc. ("Doubleday") for summary judgment. I submit, and will set forth below, that there are many genuine questions of material fact herein as well as ultimate questions of fact and law for the jury to decide.

A. Puche's inexplicable malice toward, and hatred of, me.

2. I confess that I am at a loss to explain why the author, Jose Luis Castillo-Puche ("Puche"), of Hemingway in Spain (the "Book"), has the bitter and vicious malice and hatred of me that I will demonstrate herein. Prior to the time the Book was published I would have said I had never seen him; I do not recognize him from the picture in the Book (No. 11 after p. 152) standing to the rear of Hemingway. I now realize he must have been the reporter who, accompanied by a photographer, was in Pamplona, Spain for two

days during the feria (festival) in 1959, to write an article for a magazine named "Gaceta Ilustrada", which I comment on below.

I know positively that I have never spoken to Puche. I speak no Spanish and as Kathryn B. Medina ("Medina"), the editor at Doubleday of the Book, stated in a letter, dated October 1, 1970, to Doubleday's Paris office (Plaintiff Exh. D for Iden.), Puche "speaks and understands no English". It is bad enough to have enemies full of hate based on things that one does; it is intolerable to be maliciously libelled and painted in a false light in a Book by a self-appointed enemy who is unknown to me. The lack of a common language of itself must create grave doubts in the minds of the triers of the facts as to the veracity of the words which Puche attributes to me and the remarks he makes about my alleged statements and conduct--e.g., how can Puche have an opinion of me as a "hypocrite" without this common language?

B. The Festival in Pamplona and the balance of the summer of 1959.

3. Substantially all of the portions of the Book in which I am mentioned (which indeed is the major portion of the Book which purports to be actual reportage of events involving Hemingway by Puche) relate to the time of the festival in Pamplona in 1959, which festival lasted approximately seven days. As I will testify at the trial, and as I have described at length in my book, Papa Hemingway ("PH"), the festival can best be described as a seven-day, continuous New Year's Eve in Times Square--very little sleep, bits of food grabbed on the run, much wine drinking, thousands of people milling in the streets and bars to whom one talks for a minute, no coherent sustained conversations because of constant interruptions, and in general a kind of madness and gaie The picture (paragraph 2 above) in which both Puche and I are shown there... gives a false impression of intimacy between us. Hundreds of people during the festival came up to talk to Hemingway, many of them had their picture taken with him and I neither spoke to nor was introduced to most of them.

With the exception of that two days in Pamplona, Puche never saw

Hemingway nor me that summer. To the extent he palms himself off as a participant* in the events of that summer, Puche is the Clifford Irving of Hemingway biography, and the Book must be read as such. No doubt Puche has read about Hemingway, either in Spanish or had English writings translated for him. Portions of the Book which he says he "remembers" or events in which he palms himself off to have been a participant with Hemingway are based either upon the Hemingway articles in Life Magazine, or PH, which was published in Spanish translation,** or other writings. As shown below, as to those items of which I have personal knowledge, many of them are untrue statements of fact--to be taken into account by the triers of the facts in judging my claim that the statements libelling me and portraying me in a false light are untrue.

C. The conversations about, and characterizations of, me attributed to Hemingway are lies.

4. On p. 161 of the Book, beginning on line 12, Puche quotes Hemingway as saying of me "he is a little precious, but he is a very smart cookie" *** "I don't really trust him, though". On p. 182, line 41, Puche says Hemingway whispered to him "Hotchner's a good friend of mine, but he's a sharp customer" *** "he's terribly intelligent, but he's also out for number one". And on p. 82, lines 30-32, defendant Puche says (allegedly based on conversations with Hemingway) that "his [Hotchner's] obsequiousness got on Ernesto's nerves and bored him to tears".

I can state unequivocally, based upon my long association with Hemingway, that he never spoke those words about me to Puche or anyone else. The letters written to me by Hemingway and his wife (two of which are quoted immediately below and others are quoted in par. 10) clearly establish the utterly fictitious and malicious nature of Puche's libelous statements attributed to Hemingway. Did the Hemingway who wrote to me on July 21, 1952:



*In Hemingway's articles in Life, he mentions all of the people who were part of his group in Pamplona and the rest of the summer and nowhere is Puche's name mentioned.

**Puche clearly did read PH in Spanish translation. In a letter, dated Sept. 12, 1973 to Kate Medina (Exh. C to her affidavit) he says "I don't want him [Hotchner] to appear as a possessor of all his [Hemingway's] secrets, like he made it look in his book."

"Dear Hotch-maru:
You are so god-damned loyal and thoughtful and I am so sloppy and bad about writing *** I wish we could see you. I miss you very much *** If there is ever anything I can do ever, let me know.
Your friend."

or who wrote to me on August 20, 1957:

"Hotch, you always write such good letters and I was so glad to hear about Venice the two different times, and the other trips and the good jokes. Mary always loves your letters too and they cheer her up. She says she would rather have you around with us than anybody. Me too. Love from Mary and me".

make the remarks attributed to him by Puche about me?

D. The descriptions of alleged conversations which Puche reports and other malicious statements are likewise entirely untrue and paint me in a false light.

5. I am described in the Book as part of an "entourage of riff-raff" and "a toady whom Hemingway couldn't do without but secretly despised" (p. 81, line 20 and continuing to p. 82, line 5), a person who could become a "Bible-thumper or a bum" (p. 82, lines 6-11), as "two-faced" and a "hypocrite" (p. 82, lines 20-25), a speaker of "drivel" and "obsequious" to Hemingway (p. 82, lines 30-32) and as "never open and above board" (p. 82, line 32 et seq.), a "picturesque rascal" or "crass opportunist" (p. 161, line 39 to p. 162), a "publicity hound" and "sponger" (p. 162, line 14 et seq.), as looking like a "crafty gypsy" (p. 196, line 23) or having a vulgar face*(p. 182, line 29). All of these words, taken separately or as a whole, expose me to ridicule and contempt and paint me in a false light, especially with regard to my professional capacity as a writer about Hemingway.

6. In addition the Book describes me as persuading Hemingway to write the magazine articles "The Dangerous Summer" in Life Magazine, even though it is clear to Puche that I was clearly a hypocrite since I knew there was no substance to the articles, out of a desire to make money from this



*Hemingway, in "The Dangerous Summer", describes that very face as "rugged and honest". (Life Magazine, September 19, 1960).

"coup" and that this was part of my "exploitation of Ernesto" (p. 82, line 32 and continuing onto p. 83, and on p. 203, lines 21 et seq.). The truth is that in the summer of 1959 I had nothing whatsoever to do with that article. Hemingway had arranged for the publication in Life prior to my arrival. It wasn't until the following year when he wrote the articles for Life that he asked me to help him edit them. I spent many hours, at his request, at this chore, for which I had his gratitude but not one penny of the money he received from Life.

7. I am described as acting as a pimp or panderer (p. 161, lines 18 et seq.) in persuading Hemingway that the "Irish girl could fill the great empty space in his [Hemingway's] heart". I never acted as a pimp or panderer. Hemingway never could have offered her to Puche to take to bed (p. 161, line 24 et seq. and repeated again on p. 196, line 4 et seq.)--the falsity of that conversation rings clear to anyone who knew Hemingway. This "Irish girl", whom I called "Honor Johns" in PH, was a journalist whose real name was Valerie Danby-Smith. She became a friend of both Ernest and Mary Hemingway, thereafter Ernest's secretary and lived with them as a member of their household and in time after Ernest's death she married Gregory Hemingway, his son. It is outrageous and utterly false of Puche to say that I urged Hemingway to take her into his bed.

8. There are repeated sly inferences in the Book which throw a false light on my relationship with Hemingway, some of which have already been set forth above. The inference which the reader is invited to draw, is that I was a Hemingway employee (p. 320, line 12 et seq.), "an expert in grinding out publicity"(p. 82, line 38), "financial adviser" (p. 324, line 26), exploiter of his reputation (p. 318, line 2 et seq.), and business manager (p. 325, line 10). Puche having already described me as a hypocrite, rascal, toady, etc., the reader is left with a total picture that I was a false friend, interested only in the opportunity to "grub" money from the Hemingway relationship.

9. I intend to offer at the trial portions of other letters (which have been shown to the attorneys for Doubleday) to me from both Ernest and

Mary Hemingway, from the beginning of our relationship in 1948 until the time of Hemingway's death in 1961, showing the contrary. A sample of these should suffice for the purpose of this motion.

Letter, dated July 4, 1950, from Mary Hemingway. "Honey Hotch" *** "I am a true admirer of you and what is more I love you and your fine sec* head and heart".

Letter, dated August 4, 1952, from Hemingway. "Christ, I wish we were going racing again. The old Hemingstein to Hotchner to Chance was the best double play combination I ever had anything to do with ***"

Letter, dated November 7, 1956, from Mary Hemingway. "Dearest Hotch Puss" *** We miss you all the time".

Letter, dated December 28, 1956, from Mary Hemingway. "Dearest Hotch Puss" *** "Is there any chance of seeing you again. We can hope. Love from both".

Letter, dated June 18, 1959, from Hemingway. [less than a month prior to the feria in Pamplona]. "If you could get to Madrid by the 26th it would be wonderful".

Letter, dated June 19, 1959, from Hemingway. "Wonderful to be seeing you so soon."

Postcard, dated September 6, 1959, from Hemingway. "We miss you at everything always".

Letter, dated September 16, 1959, from Hemingway. "We had a great trip all around though its always lonesome without you".

Letter, dated May 4, 1961, from Mary Hemingway. "Hotch Dear". *** "sweetie, and love to you all".

It is impossible to square these sentiments with the Puche statement (Items 3 and 4 in par. 3 of the Rosenman affidavit) in the Spanish version that I was an "ass-licker" and a "shit-licker" or even with the "toned-down" version of the Book as published.

Examples of Other False Statements in the Book

10. In addition to what is set forth above I, as of my own knowledge, want to point out a few (among scores of) examples of other false



*Using the French word for "dry", applied to the best French champagne.

statements made in the Book, which will be relevant to the triers of the facts:

(a) "It was Ordonez as I remember who first called him 'Freckles', and the nickname stuck" at page 82, lines 1-5. As I tell in PH (Chapter 12) and Hemingway recounts in the Life articles, it was some weeks after the Pamplona festival, in Ciudad Real, that as a prank I dressed as a bullfighter and appeared in the bullring with Ordonez as a sobresaliente, which means a substitute matador. In connection with that appearance I was dubbed by Ordonez with the Spanish name "El Pechas", which means "The Freckled One", on the bullfight posters. Before that time, this nickname never existed. This is something Clifford Irving Puche could not possibly "remember" at Pamplona some weeks earlier.

(b) "Where was that photograph of Ernesto extinguishing, with one shot, a lighted cigarette in Ordonez's mouth *** I'd seen him do it several times in a row, the cigarette getting shorter and shorter with every shot, and he never missed ***" (p. 139, line 23 et seq.) This is more Clifford Irving fantasy--Puche was not present at Hemingway's 60th birthday party, at which this event occurred.

(c) On p. 177, line 9, he has Hemingway in Pamplona "leaning on an ashwood cane" and on p. 179, line 3, "brandishing his cane". This cane existed only in Puche's imagination.

(d) On p. 197, line 19, the "Irish girl" speaks in "charming, hesitant Spanish", on p. 198, lines 2-3, I speak in "halting Spanish", and on p. 208, line 41 et seq., the two American girls called "kidnap victims" speak in "hesitant, faulty Spanish". Neither I, nor Valerie, nor the two American "kidnap victims" spoke any Spanish whatever.

11. If defendant Puche appears at the trial, I will show that there are numerous misstatements of fact in the Gaceta Ilustrada article written by him, dated August 8, 1959; in addition I will show numerous contradictions between the Gaceta article and the Book.

12. The quotations from Carlos Baker's Ernest Hemingway: A Life Story which are heavily stressed in the affidavit of Robert Marshall are not relevant to the issues on this motion, or to the issues involved in this lawsuit. The lawsuit deals with Puche's malice toward me and Doubleday's wilful or reckless disregard of the facts. Baker's book is based entirely on documents furnished to him after Hemingway's death. Baker never met or spoke to Hemingway during his lifetime, or to me, or to the other people who were present at the times described in the Book.

WHEREFORE, I submit that defendant Doubleday's motion for summary judgment be denied in all respects.

A.E. Hotchner

Sworn to before me this
10th day of September, 1975.

MERVIN ROSENMAN
Notary Public, State of New York
No. 31-3357850
Qualified in New York County
Cert. filed in N.Y. Co. Clk's Office
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

Mervin Rosenman, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff in this action, am fully familiar with all of the proceedings heretofore had herein, and I make this affidavit in opposition to defendant Doubleday & Company, Inc. ("Doubleday") motion for summary judgment.

2. This motion should be denied because there are genuine issues of material fact and ultimate questions of law and fact—which must be determined by the triers of the facts herein. This affidavit will show:

(a) Defendant Jose Luis Castillo-Puche ("Puche"), author of Hemingway in Spain (the "Book"), motivated by malice toward, and hatred of, plaintiff, made libelous statements about plaintiff in the original Spanish Book, Hemingway, Entre La Vida Y La Muerta (the "Spanish Version"), and painted plaintiff in a false light.

(b) Doubleday recognized, in advance of publication, the malice of Puche toward plaintiff and allegedly "toned down" the libelous and malicious statements in an attempt to head off a lawsuit, but the Book remains libelous, malicious and paints plaintiff in a false light.

(c) Doubleday, notwithstanding the warnings of "gross errors" in the Spanish Version given by Helen R. Lane, the translator of the Book, and notwithstanding its recognition of Puche's malice toward plaintiff, made no effort to check the statements by Puche with plaintiff, or with Mary Hemingway (Ernest Hemingway's widow) or any of the other persons who were present in Spain at the times described in the Book, thus raising a jury question of whether it published with knowledge or reckless disregard.

(d) It is also for the triers of the facts to determine whether plaintiff is entitled to exemplary damages from Doubleday, based upon its publication of the Book in the U.S. and upon its failure to stop the publication of a British edition after this lawsuit was commenced.

3. The Book was translated by Helen R. Lane. Of her translation only six pages remain (the "Lane Translation"). These were produced and marked as Exhibits to the deposition of Kathryn B. Medina ("Medina"), the editor at Doubleday in charge of the Book. The other pages of the translation and the galley proofs of the Book (per letter to me, dated July 24, 1975, from Satterlee & Stephens) were not found after a search at Doubleday. To check the accuracy of those few remaining pages of the Lane Translation, plaintiff has caused certain portions of the Spanish Version to be translated by Sydney Oppenheim, a competent translator ("Oppenheim Translation"). I set forth four examples of the intense malice of Puche toward plaintiff and how the same were "toned down" by Medina. This can be most graphically shown by the following comparative table:

Item 1

| Oppenheim Translation | Lane Translation | The Book |
|---|---|---|
| p. 113 (of Spanish Version) | p. 141 | p. 82 |
| "The last time, he soured the party a bit for us, with that rather ambiguous type, freckled and much given to sophistry, who could be said to be a representative of that typical character in American literature who could be branded an exponent of virtues or a panderer of vice". (emphasis added) | "The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum". | "The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum". |
| Item 2 | | |
| p. 113 | p. 141 | p. 82 |
| "He is very intelligent," Ernesto told me, in an undertone.<br>"That is very evident."<br>"He works in television and the movies, and he knows what he is doing."<br>"It is evident that you are old acquaintances."<br>"We are almost old friends."<br>"It seems that he likes you very much."<br>"He is a faithful dog. But you must know that I don't trust anyone. Once, one jumped on me in bed because he was over-confident." | "He's a smart cookie," Ernesto whispered to me.<br>"I can see that."<br>"He works in television and the movies and knows his way around."<br>"I gather you've known each other a long time."<br>"Yes, we're more or less old friends."<br>"He's obviously very fond of you."<br>"He's as faithful as a bird dog. But I don't trust anybody--you know that. I did once, and the guy jumped into bed with me". | "He's a smart cookie," Ernesto whispered to me.<br>"I can see that."<br>"He has lots of connections in television and the movies and knows his way around."<br>"I gather you've known each other a long time."<br>"Yes, we're more or less old friends."<br>"He's obviously very fond of you."<br>"He's as faithful as a bird dog. But I don't trust anybody--you know that. I did once, and the guy tried to hop in bed with me!" |

Item 3

Oppenheim Translation

p. 209

"Then he would leave Mr. Davis and refer to Mr. Hotchner, and say:
'He is very 'dear' but very capable and intelligent.'
'It is very evident that he likes you very much', I told him.
After a moment, he added:
'But I have still not reached the trusting stage.'
'You yourself said he is very useful to you.'
'Yes, but he is an ass-licker and dirty/ and something of a deviate.
I wouldn't sleep with him in the same room'." (emphasis added)

Lane Translation

p. 308

"Then he dropped the subject of Davis and started in on Hotchner:
'He's a little precious, but he's a very smart cookie'.
'I can see that he's very fond of you,' I replied.
Then a little while later
'I don't really trust him though.'
'But I've heard you say he's very useful to you.'
'Yes, that's true, but he's dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him'." (emphasis added)

The Book

p. 161

"Then he dropped the subject to Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.'
'I can see that he's very fond of you,' I replied.
Then, a little while later, he'd whispered, 'I don't really trust him, though'."

Item 4

p. 114

"I think it was Ordonez who nicknamed him 'Freckles' and that name 'Freckles' stayed with him, and he took it with good humor and even a certain amount of talent, although at times his role of shit-licker of the old colossus was so ostentatious that it almost made one nauseous." (emphasis added)

p. 141

"It was Ordonez, as I remember who first called him 'Freckles,' and the nickname stuc.. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it [balance crossed out and illegible]"

p. 82

"It was Ordonez, as I remember, who first called him 'Freckles', and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it was sickening".

4. I need not, in this affidavit, repeat what is said in the Hotchner affidavit or in plaintiff's Memorandum of Law, that the Book, as published and as supposedly "toned down",is libelous and paints plaintiff in a false light.

5. However, though she now tries to gloss it over, it must have been obvious at the time that Medina had serious doubts prior to publication. In Exhibit C to her affidavit in support of the motion [her memorandum to Dick Cariello asking him to read certain attached pages of the translation relating to Hotchner] she characterizes Puche's statements about Hotchner as "bitchy" and as "side-swiping". The response to her memorandum served to put her on notice that the statements about Hotchner were in fact libelous and malicious, for also annexed to her affidavit (also marked Exhibit C) is a memorandum of Bill Austin (William Austin), the Assistant Contracts Manager of Doubleday. While Mr. Austin's affidavit states he was not then a lawyer, he gave Medina correct and sound legal advice. After urging that ten references to Hotchner be "toned down or eliminated" by Medina, Austin concludes:

> "When looked at together these statements certainly ridicule Hotchner and impugn his reputation and character. As he seems to be an author who has worked in movies and TV, this could be a serious matter.
>
> To make matters worse I doubt whether any of these statements can be substantiated in any way.
>
> From reading the pages you sent, this treatment borders on 'malice', which together with 'reckless disregard for the truth', is a prime element in any libel action. **" (emphasis supplied)

6. Moreover, more than one year prior to the Bill Austin memorandum, Medina had been put on notice by Helen Lane, the translator (letter, dated April 25, 1972, from Lane to Medina; Plaintiff's Exhibit Q for Identification) as to Puche's doubtful veracity:

> "Moreover I discovered that a large number of Castillo-Puche's comments about the episodes in Hemingway's novels contain gross errors of fact—

> citations attributed to entirely the wrong book, and in one very troublesome case a total confusion of two characters in For Whom the Bell Tolls (Agustin and Andrés), so that C-P's remarks, especially page 257, simply do not apply at all. Groan! I am afraid C-P will have to be asked to rewrite to make his elucubrations on the bullfight metaphor in For Whom fit the novel here. Groan!" (emphasis added)

7. Medina was then fully aware of Puche's malice, his reckless disregard for the truth, and the problems involved in this publication, for a letter, dated August 6, 1973, to Puche (attached as Exhibit C to the Medina affidavit) states:

> "The third important matter which I'd like to take up with you concerns the possibility of libel to Hotchner in the book. You are certainly entitled to your opinion of Hotchner, and you may very well be right--it seems to our lawyers* that it would be a good idea if we would tone down some of your remarks about him, on the off chance that he could possibly bring suit against you. The fact that he is an American author with quite a reputation, and also I seem to recall a professor, it's possible that he would think some of your remarks border on 'malice' (in the legal sense) and that it would be professionally damaging to him, which in a legal sense could come under the legal grounds 'damaging to his reputation and character'. It is, in my opinion, not really awfully important in terms of what you are trying to say in this book to get at Hotchner, one way or the other, very strongly ***". (emphasis supplied)

And later on in the letter she states that after "toning down" the revised pages "certainly won't make Hotchner look marvelous".

8. Notwithstanding the foregoing:

(a) Medina was the only person at Doubleday to read the entire Lane Translation, except for a copy editor, who read it primarily for punctuation, spelling, etc. (Medina affidavit, par. 4).



*In addition to the other questions of fact for a trial herein, there is the question of the credibility of Medina. In her deposition (p. 37), she stated that the Book was not given to Satterlee & Stephens or any other lawyer or law firm to read prior to publication. Thus her statement about "our lawyers" is simply untrue. In addition in a letter dated March 13, 1973 (Plaintiff Exh. R for Ident.) to Helen Lane, the translator, Medina states that Mary Hemingway "more or less 'approves' of the Book." In her deposition (p. 45-46) Medina stated that she did not remember the basis for that statement, did not remember that Puche told her that Mary Hemingway had read the Book in Spanish, and that Mary Hemingway did not read the Helen Lane translation or galley proofs of the Book. Obviously Medina is as careless with the truth as Puche.

(b) The Book in galley proofs was not given to Mary Hemingway or any of the other persons who had been present in Pamplona in 1959 or who are mentioned elsewhere in the Book to read prior to publication (Medina deposition, pp. 45-46 and 49-50 ).

(c) Although Medina knew the address of plaintiff, and indeed wrote to him on March 12, 1973 (Plaintiff's Exh. V for Iden.) stating that since he [Hotchner] "wrote such a wonderful book about Hemingway" could he help in getting for Doubleday copies of the Hemingway articles in Life Magazine, she made no attempt to verify any of the Puche statements.

(d) Neither Medina nor any of the other employees of Doubleday ever read plaintiff's PH to see how it squared with statements made in the Book (Medina deposition, p.57-58).

(e) The reviews by two readers (Par. 3 of the Medina affidavit), before the Book was accepted for publication, relate to the literary merits of the Spanish version and have no relevance to the duty Doubleday owed with regard to the Hotchner references.

(f) After "toning down"*the more flagrantly improper matter, Doubleday proceeded to publish without consulting counsel, although



*That Medina did not succeed is shown by the review in Newsweek Magazine (5/27/74):

> "In his narration of that shipwreck--sprawling, often ridden with bathos--Castillo-Puche revisits old haunts--bars, hotels, bullrings, landscapes--where he was with Hemingway (and other Papa groupies like biographer A.E. Hotchner, whom he despises), interlarding the Old Man's provocative pronouncements with supposedly revealing glosses of Hemingway fiction." (emphasis supplied)

and in the first paragraph of its lengthy (8/15/74) review, Best Sellers, the highly respected book review published by the University of Scranton, wrote:

> "A number of the recent books about Hemingway have contributed significantly to our understanding of the man and his work, others are much less important yet prove interesting in their own way. Carlos Baker's biography quite obviously belongs in the first category and Hotchner's 'Papa Hemingway' in the second, as does 'Hemingway in Spain'. Such a judgment will not please Jose Luis Castillo-Puche, for in his work he constantly puts down Hotchner for a 'wet blanket' with a 'vulgar, careworn face' whom Hemingway did not trust. He writes that Hotchner 'was such a toady at times that it was sickening' but that 'Ernesto rather liked Hotchner's funny stories and put up with his drivel'."

Medina and Austin were on full notice of the potential falsity of the objectionable matter.

9. In addition to what is said above about Doubleday's publication of the Book with "knowing and reckless falsehoods", the triers of the facts are entitled to assess, as an additional item of exemplary damages, the fact that Doubleday had licensed the British publication to New English Library, Ltd. under an agreement, dated July 24, 1974 (Plaintiff's Exh. W for Iden.). Notwithstanding the commencement of this lawsuit, on January 30, 1975 Doubleday wrote to said New English Library saying that since there was no outstanding injunction against Doubleday which would prohibit the license of the British rights, there is no reason why the New English Library could not publish its edition as scheduled.

10. WHEREFORE it is submitted that defendant Doubleday's motion for summary judgment should be denied in all respects.

Mervin Rosenman

Mervin Rosenman

Sworn to before me this

10th day of September, 1975.

SIMON J. HAUSER
Notary Public, State of New York
No. 60-[illegible]
Qualified in Westchester County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| A.E. HOTCHNER, Plaintiff, | : | 74 Civ. 5516 (CLB) |
| -against- | : | AFFIDAVIT |
| JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., Defendants. | : | |
| DOUBLEDAY & COMPANY, INC., Defendant and Third-Party Plaintiff, | : | |
| -against- | : | |
| EDICIONES DESTINO S.L., Third-Party Defendant. | : | |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

Mary Schoonmaker, being duly sworn, deposes and says:

1. I make this affidavit in connection with the motion of defendant Doubleday & Company, Inc. for summary judgment.

2. Teddy Jo Paulson and I were the two "kidnap victims" of Hemingway in Pamplona described in plaintiff's book, Papa Hemingway, and in Hemingway in Spain (the "Book"), by Jose Luis Castillo-Puche.

3. I have read the affidavit of Mervin Rosenman, sworn to September 10, 1975, and especially paragraph 3 thereof which contains the Oppenheim Translation of the Spanish Version of the Book. I can say emphatically of my own knowledge, that Hemingway never called Hotchner (whom we all called "Hotch") a "faithful dog" or said that he "didn't trust" Hotch, or that Hotch was an "ass-licker" and "something of a deviate" with whom

Hemingway "wouldn't sleep in the same room". Hemingway treated Hotch like his favorite son and constantly, by both actions and words, showed his affection and respect for Hotch. During the seven days we spent in Pamplona, the Hemingway group was as one big family. Every day of the feria, we met early in the morning for breakfast and operated as a group until we went to our rooms late at night. As a consequence, I was with Hemingway, Mrs. Hemingway, Hotch and the other group members at all times. It would have been impossible for Puche to have done any of the things in Pamplona which he described in the Book, or had any of his alleged conversations with Hemingway, for if he had he would have had to be a part of our group which he emphatically was not. Not only was there no opportunity for such conversations, but the things Puche invents for Hemingway to say do not ring true either in form or substance.

I sat next to Hemingway many times at meals that summer. He would make the warmest remarks about Hotch, such as "Hotch is the best co-pilot I ever had", "there is something so spirited and fun-loving about him, it rubs off onto me", "Hotch has a wonderful face--I wish one of the Prado boys was around to get it on canvas". Never, at any time, did Hemingway say anything even faintly derogatory in any way about Hotch. To anyone who saw Hemingway and Hotch together, the Puche report of above-quoted conversations are false. The fact is I remained a friend of the Hemingways all that summer and through the years until Ernest's death. I saw Ernest and Mary socially when they came to New York and not once in all those years did I ever hear either Ernest or Mary say anything in the least deprecating about Hotch. Moreover, Ernest often emphasized how much he liked and trusted Hotch. I distinctly recall the time Ernest said to me, "Hotch and I trust each other always, which makes him my Indian brother."

4. I have also read the affidavit of plaintiff, sworn to September 10, 1975, especially paragraph 10 thereof, and all of the statements made by him of which I have knowledge are true and correct.

5. I have no recollection of ever seeing Puche, and since I speak no Spanish could not have spoken to him. Even looking at his picture (No. 11 after p. 152) I did not recognize him. Clearly he was never a member of the Hemingway entourage in Pamplona and for the rest of the summer in Spain.

6. From first page to last, the Puche Book is an unending succession of fabrications. He doesn't even describe Hemingway accurately--giving him skinny, bowed legs (they were straight and heavily muscled), singing in a booming voice (which he didn't have) and brandishing a cane which he never carried. A few examples of the literally scores of falsities in the Book are:

(a) Page 183, line 17. Puche says "Ernesto had started making advances to them (the "kidnap victims") more or less as a joke, but was quite willing to go further". Hemingway made no advances whatever.

(b) Page 191, line 1. "the two Yankee girl students were expressing their surprise on being told that there would be no fistfights or any sort of violence among the huge crowd of youngsters at the fiesta." This is simply not so and, since I speak no Spanish and I learn from the plaintiff's affidavit that Puche spoke no English, how could he know that I was expressing "surprise"?

(c) Page 346, line 16. "Ernest worried constantly about Antonio's little scratch, which required no more than a strip of adhesive tape". What Puche calls a little scratch was an open horn wound with a surgical drain.

(d) Page 356, line 14 et seq. Puche says Ernesto would ask us to scratch both his back and front. This is plainly false.

(e) Photograph 30 (after page 224) supposedly shows Teddy Jo Paulson and me, the "kidnap victims" with Hemingway--the photograph is not of either Teddy Jo or of me.

7. To summarize, I find it incredible that Puche attributes to Hemingway feelings and words about Hotch which I know Hemingway never felt or said, or that Puche makes so many false statements about me and others in the Book.

Mary Schoonmaker

Sworn to before me this
11th day of September, 1975.

Notary Public

MERVIN ROSENMAN
Notary Public, State of New York
No. 31-3357850
Qualified in New York County
Cert. filed in N.Y. Co. Clk's Office
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - - - - -x

74 Civ. 5516 (CLB)

AFFIDAVIT

SPAIN )
MADRID ) ss.:
CITY OF ~~TORREMOLINOS~~)

Nathan Davis, being duly sworn, deposes and says:

1. I am known as "Bill Davis", and as such am described both in the plaintiff's (A.E. Hotchner) book, Papa Hemingway, and in the defendant Jose Luis Castillo-Puche's ("Puche") book, Hemingway in Spain (the "Book"), and reside in Torremolinos, Spain.

2. I was a close friend of Ernest Hemingway for 15 years or more. Since I speak and read Spanish fluently, I have read Hemingway, Entre La Vida Y La Muerta, the Spanish language edition of the book, as well as the Book, together with the complaint in this lawsuit.

3. I state unequivocally that the alleged conversations with Hemingway about Hotchner which Puche reports are false, and that the characterizations attributed to Hotchner by Puche are false as well as vicious. From my long acquaintance with Hemingway, both alone with him and during the considerable time I spent with both Hemingway and Hotchner, I can state of my own knowledge that Hemingway could not have possibly made those statements or given Puche these impressions of his alleged feelings about Hotchner. On the contrary, Hemingway's attitude toward Hotchner and the statements he made

to me about Hotchner, were always very warm, trusting and indicative of an extremely close relationship with a very good friend.

4. I intend to come to the United States for the trial and testify at greater length about the statements made in this affidavit.

5. I affirm that the statements made herein are true, under penalties of perjury. I also am swearing to this affidavit before an American Consul authorized to administer oaths.

The Spanish State
Province and City of Madrid
Embassy of the United States
of America

Nathan Davis

Sworn to before me this
8th day of September, 1975.

Roberto R. Muñoz
Consul of the United States
of America

305,277

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U.S. DISTRICT COURT
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S.D. OF N.Y.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LOUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516-CLB

#43382

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

MEMORANDUM AND ORDER

Bricant, J.

In this diversity action filed December 17, 1974 to recover damages for libel and invasion of privacy, defendant Doubleday & Company, Inc. (hereinafter "Doubleday") has moved for summary judgment dismissing the complaint as to it "upon the ground that the statements complained of in the complaint are about a public figure

and were not published by Doubleday with knowledge of their falsity or with reckless disregard of the truth thereof, and are therefore constitutionally privileged."

Plaintiff A. E. Hotchner ("Hotchner") is an author and was a friend and sometime companion of the late Ernest Hemingway. Defendant Jose Luis Castillo-Puche ("Puche"), a resident of Spain, wrote a book in Spanish entitled Hemingway Entre la Vide y la Muerte (hereinafter "the book" or "the Spanish Edition"), which was published in Spain in 1968 by third-party defendant Ediciones Destino S.L. ("Destino"). Plaintiff is referred to in a generally uncomplimentary fashion in the Spanish Edition and, for purposes of this motion, defendant concedes that these unfavorable characterizations are not truthful, and that the toned down English version also defames him.

The Spanish Edition came to the attention of Doubleday. On May 18, 1970, after having it read and reviewed by knowledgeable persons, Doubleday purchased the English language rights to the book from Destino. Doubleday caused the book to be edited, translated, prepared for publication, printed and sold in the United States. On this publication, which took place in New York, plaintiff bases this action. Counsel agree that New York law applies.

I

Both Puche and Hotchner were friends of Hemingway and each claims to have been well acquainted with Hemingway's life and thoughts in the years immediately prior to his death in 1961. Hotchner is the author of a book entitled Papa Hemingway, A Personal Memoir, which was serialized in an American magazine in March and April, 1966 and published in the United States immediately thereafter with a substantial degree of commercial success.

Defendant contends that Hotchner is a public figure and, therefore, the standard applicable to plaintiff's claims is that first enunciated in New York Times Co. v. Sullivan, 376 U.S. 254 (1964). There, it was held, on First Amendment grounds, that a public official may recover damages for libel only if the defamatory publication "was made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279-80. The scope of this protection was extended in Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967), where the New York Times standard was applied to plaintiffs in defamation actions who were "public figures," although they did not hold public office.

The "public figure" doctrine was reaffirmed in words in Gertz v. Robert Welch, Inc., 418 U.S. 323, 342-43 (1974), but the range of its application has been left cloudy. In defining the class of plaintiffs whose claims are limited by the New York Times rule, the Supreme Court in Gertz used language which appears simple enough: "[t]hose who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures...." 418 U.S. at 342. Gertz further held that designation as a public figure

> "may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions." 418 U.S. at 351.

Although readily articulated, these standards pose difficulties in their application, as evidenced by the Gertz decision itself. Without reviewing the facts of the Gertz case in detail, the Supreme Court there treated as a "private citizen," as contrasted with a "public figure," a prominent attorney who had involved himself

in civil litigation against a policeman, brought by the family of a murdered youth to recover money damages for wrongful death. The policeman had been convicted of murder in the second degree. The civil case, closely related to a criminal prosecution, and the motives of those bringing it, as well as its possible chilling effect on future police action would seem clearly within the area of protected First Amendment activities, "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people" (Roth v. United States, 354 U.S. 476, 484, quoted with approval in New York Times Co. v. Sullivan, supra at 269 [1964]).[1/]

In addition to injecting himself voluntarily into this area of public controversy, Gertz had achieved some public prominence in his own right. He had served as an officer of the National Lawyers Guild, and had "considerable stature as a lawyer, author, lecturer and participant in matters of public import" [fn. 3 of Gertz, p.330 of 418 U.S. quoting from the opinion below, 471 F.2d 801, 805].

Perhaps if attorney Gertz was not a public figure, nobody is.[2/] But at least the Gertz Court in words reaffirmed the New York Times principle.

Under New York law, "[t]he decision as to whether, under the circumstances, a privilege exists, is for the court and not the jury." Duffy v. Kipers, 26 App.Div.2d 127, 271 N.Y.S.2d 338 341 (4th Dept. 1966) (governmental officer acting within scope of official duties). See also, Phillips v. Murchison, 252 F.Supp. 513 (S.D.N.Y. 1966), aff'd. in relevant part, rev'd. in other parts, 383 F.2d 373 (2d Cir. 1967) (privilege accorded reports of judicial proceedings); Cheatum v. Wehle, 5 N.Y.2d 585, 594, 186 N.Y.S.2d 606, 612 (1959) (fair comment); 2 E. Seelman, The Law of Libel and Slander in New York, §592.

In Rosenblatt v. Baer, 383 U.S. 75, 88 (1966), the Supreme Court instructed the trial court upon retrial "that, as in the case with questions of privilege generally, it is for the trial judge in the first instance to determine whether the proofs show [plaintiff] to be a 'public official.'" Whether a party is a "public official" is more readily ascertainable than whether he is a public figure, and is a fact upon which it is unlikely that reasonable minds could differ. However, the cases appear to authorize this Court to determine whether Hotchner is a "public figure," just as we would determine whether another plaintiff is a "public official."

We further note that the amended complaint states as a second claim for relief an invasion of plaintiff's statutory right of privacy under N.Y. Civ. Rights Law §51. Construing this statute in light of the New York Times standard, Time, Inc. v. Hill, 385 U.S. 374, 388 (1967) held that the First Amendment barred recovery for "false reports of matters of public interest in the absence of proof that the defendant published the report with knowledge of its falsity or in reckless disregard of the truth." See Cantrell v. Forest City Publishing Co., 419 U.S. 245 (1974). Whether a matter is of "public interest" and provides its author and publisher with this qualified privilege is likewise an issue for the court's determination. Man v. Warner Bros., Inc. 317 F.Supp. 50 (S.D.N.Y. 1970). See also Gordon v. Random House, Inc., 486 F.2d 1356 (3d Cir. 1973), vacated, 419 U.S. 812 (1974); Bon Air Hotel, Inc. v. Time, Inc., 426 F.2d 858 (5th Cir. 1970); Wasserman v. Time, Inc., 424 F.2d 920 (D.C. Cir.), cert. denied, 398 U.S. 940 (1970). But see, Taggart v. Wadleigh-Maurice, Ltd., 489 F.2d 434 (3d Cir. 1973), cert. denied, 417 U.S. 937 (1974).

Although the issue of whether a plaintiff in a defamation action is a public figure poses a mixed question of law and fact, it is nevertheless one for the Court, not the jury, to determine.

In Montandon v. Triangle Publications, Inc., 45 Cal. App.3d 938, 120 Cal. Rptr. 186, cert. denied, 44 U.S.L.W. 3225 (U.S.S.C. October 14, 1975), the Court held that an author who made promotional appearances on radio and television was "a public figure and a person of general newsworthiness," finding it unnecessary to detail the evidence which supported this conclusion. Without referring to the Gertz decision, the Court adopted the definition of a public figure pronounced in Cepeda v. Cowles Magazines and Broadcasting, Inc., 392 F.2d 417, 419 (9th Cir.), cert. denied, 393 U.S. 840 (1968):

> "'Public figures' are those persons who, though not public officials, are 'involved in issues in which the public has a justified and important interest.' Such figures are, of course, numerous and include artists, athletes, business people, dilettantes, anyone who is famous or infamous because of who he is or what he has done."

Plaintiff Hotchner has written several novels and non-fiction books, as well as articles, short stories and original television plays. His work, Papa Hemingway, previously mentioned was his most successful. Papa Hemingway has sold at least six hardbound printings and six pocketbook printings and was a Book of the Month Club selection.

In the Spring of 1948, Hotchner had been a staff writer for the magazine "Cosmopolitan", which dispatched him to Cuba, in his words, "to ask Hemingway to write an article on a particular topic." From that beginning there developed a close personal friendship which continued until July 2, 1961, when Hemingway killed himself.

As a result of his close association with Hemingway, Hotchner created a number of adaptations of Hemingway's works for use in radio, television and motion pictures. During the period from 1966, when his book appeared, to the present, Hotchner has given lectures for fees concerning Hemingway's activities. Hotchner's works have appeared on television and in widely circulated popular magazines.

Although Papa Hemingway has brought Hotchner some measure of notoriety, it is doubtful whether his name is widely-recognized. In reaching its conclusion that attorney Gertz was not a public figure, the Supreme Court observed:

> "Although petitioner was ... well known in some circles, he had achieved no general fame or notoriety in the community. None of the prospective jurors called at the trial had ever heard of petitioner prior to this litigation, and respondent offered no proof that

> this response was atypical of the local population. We would not lightly assume that a citizen's participation in community and professional affairs rendered him a public figure for all purposes. Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." Gertz v. Robert Welch, Inc., supra, 351-52.

Accordingly, it would appear that, although Hotchner was the author of a "best seller" literary work, he cannot be considered a public figure for all purposes unless and until the Supreme Court modifies the doctrine of Gertz.

Defendant argues alternatively, with considerable persuasion, that Hotchner, by publishing Papa Hemingway, and by adapting works of Hemingway for television, movies, records and ballet, voluntarily "inject[ed] himself ... into a public controversy" surrounding the latter years of Hemingway's life, or into the controversy, stated in narrower terms, of Hotchner's personal relationship with Hemingway. Plaintiff admits that he is "thought

of in some way, as a Hemingway authority, having known him and dealt with his work and having received some recognition because of it." (Deposition of A. E. Hotchner, April 3, 1975, p. 66).

Gertz did not overrule prior decisional law which extends the protection of the New York Times standard to defendants in actions brought by bona fide public figures. In Curtis Publishing Co. v. Butts and Associated Press v. Walker, 388 U.S. 130, 154-55 (1967), Justice Harlan, writing for a plurality of the Court, explained the rationale for the more stringent standard for recovery by public figures:

> "We note that the public interest in the circulation of the materials here involved and the interest of the publisher in circulating them, is not less than that involved in [New York Times v. Sullivan, supra]. And both Butts and Walker commanded a substantial amount of independent public interest at the time of the publications; both, in our opinion, would have been labeled 'public figures' under ordinary tort rules.... Butts may have attained that status by position alone and Walker by his purposeful activity amounting to a thrusting of his personality into the 'vortex' of an important public controversy, but both commanded sufficient continuing public interest and had sufficient access to the means of counterargument to be able 'to expose through discussion the falsehood and fallacies' of the defamatory statements." [citations omitted].

Hotchner injected himself into the controversy surrounding the later years of Ernest Hemingway's life. Hemingway's life as an expatriate is a matter of considerable public interest, as is evidenced by the success of Hotchner's book and by Doubleday's interest in Puche's book. Hotchner did not profess to enter into the public discussion as an academic biographer, literary critic or detached observer of Hemingway. In the Foreword to Papa Hemingway, Hotchner wrote:

> "I was his close friend for fourteen years, right up to the day he died. I knew about his life: the adventures, the conversations, the dreams and disillusions, the triumphs and defeats of this complicated, unique, numorous, intense, fun-loving man who was Ernest Hemingway...."

The alleged defamation resulted from Puche's later published rejection of this claim of intimate knowledge.

Hotchner continues to be an active author who lectures and contributes to popular magazines frequently. Hotchner has access to publications "'to expose through discussion the falsehood and fallacies' of the defamatory statements." Indeed, Hotchner's access to certain publications may have been improved by his personal involvement in this controversy.

Accordingly, upon the affidavits submitted with this motion, and the depositions and answers to interrogatories, the Court finds that, for purposes of this litigation, plaintiff Hotchner has achieved the status of a public figure.

II

Finding Hotchner is a public figure, and the New York Times standard is to apply, plaintiff will have to demonstrate that the book was published with actual malice. "Actual malice," here means knowledge of the falsity of the published statements or reckless indifference as to whether they are true or false. "Actual malice" is to be distinguished from a bad or corrupt motive or some personal spite or desire to injure the plaintiff, Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 82 (1967), although such subjective factors may be relevant to the issue of "actual malice."

Doubleday asserts, without contradiction, that it purchased the English language rights to the book from Destino, a reputable Spanish publisher and third-party defendant in this action. Destino published the book in Spain in 1968 without let or

hindrance, or litigation, by Hotchner or other persons defamed therein.

Doubleday secured the services of a Spanish translator to translate Puche's Spanish text into English. An Editor, whose affidavit in support of the motion has been considered, was assigned to supervise the publication of the American edition. The Editor discovered certain uncomplimentary remarks concerning the plaintiff. Following established policy at Doubleday, the Editor referred these passages to Doubleday's Contracts Department for their "review from the standpoint of libel." In so doing, the Editor attached a note which reads in part:

> "... the author of this book doesn't seem to like Hochner (sic) very much; ... I don't really think anything [Castillo-Puche] says in the book about Hochner (sic) is libelous--it's probably just bitchy. But I thought you should look at the attached pages, which refer to Hochner (sic), and say whether you think it's okay to publish with this sort of side-swiping left in."

The Assistant Contracts Manager, in a responding memorandum, recommended that certain references to Hotchner "be toned down or eliminated." He also observed:

> "When looked at together these statements certainly ridicule Hotchner and impugn his

> reputation and character. As he seems to be an author who has worked in movies and TV, this could be a serious matter.
>
> To make matters worse I doubt whether any of these statements can be substantiated in any way."

In their affidavits supporting the motion for summary judgment, both the Editor and the Assistant Contracts Manager assert that they had no suspicion that anything said in Puche's book about Hotchner was false.

Doubleday's Editor wrote a letter to Puche, dated August 6, 1973, discussing certain pre-publication difficulties, among them Doubleday's concern about the references to Hotchner. In soliciting the author's approval to alter the translated version of his text, the Editor wrote:

> "The third important matter which I'd like to take up with you concerns the possibility of libel to Hotchner in the book. You are certainly entitled to your opinion of Hotchner, and you may very well be right--it seems to our lawyers that it would be a good idea if we would tone down some of your remarks about him, on the off chance that he could possibly bring suit against you. The fact that he is an American author with quite a reputation, and also I seem to recall a professor, it's

possible that he would think some of your remarks border on "malice" (in the legal sense) and that it would be professionally damaging to him, which in a legal sense could come under the legal grounds "damage to his reputation and character". It is, in my opinion, not really awfully important in terms of what you are trying to say in this book to get at Hotchner, one way or the other, very strongly--he's just not important enough as a character in the story you are telling to risk, it seems to me, a libel suit, or even a lot of unpleasantness in the American press; your book is wonderful in enough ways, you make enough valid points about Hemingway and his relationship with Spain (which is your real theme), so that I think that you can afford to be more discreet with Hotchner, simply for the good of your own reputation in the United States and the success of the book. If it's okay with you I will tone down your remarks on him, rather slightly. If you like I will send you the pages on which I do this, so that you can see how it reads. I certainly won't make Hotchner look marvelous--it's a question of degree and choosing a milder word for an unadmirable characteristic here and there."

In a letter from Madrid on September 12, 1973, Puche responded in part:

"3rd.- I don't mind that you lighten the words with which I qualify Mr. Hotchner, specially taking away anything that could be used as a libel suit against me. Nevertheless, I don't want him to appear as a man who was in Ernest's most sincere trust

and as a possessor of all his secrets like he made it look in his book. He was always a servant to Hemingway, who didn't mind much about him. Ernest did not always talk highly of him, To me he said once that Mr. Hotchner was a man he wouldn't want to be left alone in a room with.

Even so, I have no interest in offendering (sic) Mr. Hotchner. You could, then, as you said, send me the pages in which this toning down has taken place and I hope to be able to give my approval immediately."

Thereupon, Doubleday's Editor revised the text intending "that the substance of the statements should not be changed, as the author's unique views of Hemingway and his entourage, already published and received well elsewhere, should be preserved in the English language edition."

Plaintiff contends that the observations of the Doubleday employees and the exchange of correspondence with Puche, when taken together with errors found in the Spanish edition by Doubleday's translator, demonstrate that Doubleday was or should have been on notice that Puche may have been motivated by some animus toward Hotchner. Plaintiff contends that, so alerted, Doubleday should have made reasonable attempts to check the truth of the statements made and the accounts of incidents described. Since

Doubleday was not faced with the deadline pressures that plague newspaper editors, plaintiff contends that Doubleday might have confirmed Puche's accounts by verifying facts with Hemingway's widow or with other persons present in Spain during the periods described in the book.

For purposes of opposing this motion, plaintiff contends that, at a minimum, Doubleday's failure to investigate under the circumstances presented here raises a question for the jury's determination whether Doubleday published the American edition with knowledge of or reckless disregard of the claimed falsity.

A factual issue exists as to whether defendant published its book with reckless disregard for the truth or falsity of its contents.

> "[R]eckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice." St. Amant v. Thompson, 390 U.S. 727, 731 (1968).

The exchange of memoranda between the Editor and other employees of Doubleday and correspondence between the Editor and Puche could be construed by the triers of fact as evidencing an awareness by Doubleday that Puche intended to portray Hotchner in an unfavorable light. If the jury were to find the statements made false, then the jury might further find that, in light of their knowledge of Puche's l w regard for Hotchner, Doubleday's employees were culpably reckless in not investigating further, or deleting the defamatory remarks.

A defendant in a defamation action cannot automatically escape liability by submitting affidavits which attest to the fact that the publication was made with a belief that the statements therein contained were true. "The finder of fact must determine whether the publication was indeed made in good faith." St. Amant v. Thompson, supra, 732.

The issue of whether this publication was made with actual malice remains as a serious factual dispute which the jury must be permitted to determine. Goldwater v. Ginzburg, 414 F.2d 324 (2d Cir. 1969); Buckley v. Esquire, Inc., 344 F.Supp. 1133 (S.D.N.Y. 1972). See also, Sprouse v. Clay Communications, Inc.,

211 S.E.2d 674, 689-90 (W.Va. Sup. Ct.), cert. denied 44 U.S.L.W. 3192 (U.S.S.C. October 7, 1975); Time, Inc. v. Ragano, 427 F.2d 219 (5th Cir. 1970).

III

Doubleday contends that the plaintiff in a libel or invasion of privacy action must bear a special burden to withstand a defendant's motion for summary judgment, lest the burdens of litigation have a chilling effect on the exercise of the freedom of the press. Defendant relies heavily upon heroic language in Meeropol v. Nizer, 381 F.Supp. 29, 32 (S.D.N.Y. 1974), stating:

> "Summary judgment is particularly appropriate at an early stage in cases where claims of libel or invasion of privacy are made against publications dealing with matter of public interest and concern. In recognition of the constitutional privilege of free expression secured by the First and Fourteenth Amendments, the courts in libel actions have recognized the need for affording summary relief to defendants in order to avoid the 'chilling effect' on freedom of speech and press.... Accordingly, the constitutional privilege mandates the granting of a motion for summary judgment as soon as it becomes clear that a plaintiff cannot establish the 'actual malice' required for recovery in defamation actions of this nature."

The last sentence quoted undercuts the very rule defendant would have us recognize. Saying that summary judgment is required where "it becomes clear that a plaintiff cannot establish ... 'actual malice'," a requisite element in a claim of this nature, is the equivalent of a showing, in the precise words of Rule 56(c), F.R.Civ.P., that as to a necessary element of the claim there "is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In Meeropol, the Court held that, under the circumstances of that case, plaintiffs could not demonstrate actual malice as required under the New York Times standard.

Similarly, although the Court in Grant v. Esquire, Inc., 367 F.Supp. 876, 881 (S.D.N.Y. 1973) also stated that "plaintiff [in a defamation action] must make a more persuasive showing than required of an ordinary litigant in order to defeat a defense motion for summary judgment," the Court denied the motion in part because of the traditional considerations relied upon in denying summary judgment. The Court dismissed motion picture actor Cary Grant's libel claim because the publication on its face was not libelous, and "no amount of 'innuendo'" could make it such, but

found that there existed issues of fact which made summary judgment inappropriate as to the plaintiff's claim under §51 of the New York Civil Rights Law.

Principles applicable to summary judgment motions generally, are applicable to such motions when made in a defamation action. Goldwater v. Ginzburg, supra; Time, Inc. v. Ragano, supra; Rinaldi v. Village Voice, Inc., 47 App.Div.2d 180, 365 N.Y.S.2d 199 (1st Dept.), cert. denied 44 U.S.L.W. 3192 (U.S.S.C. October 7, 1975); Thomas H. Maloney & Sons, Inc. v. E. W. Scripps Co., 43 Ohio App.2d 105, cert. denied 44 U.S.L.W. 3192 (U.S.S.C. October 7, 1975).

In Goldwater, supra, the Court found summary judgment to be inappropriate where "the non-moving party, filed affidavits and relevant materials to show affirmatively that there was a genuine issue of fact for a trier of fact to resolve, the existence of [defendant's] possible actual malice." Id., at 338 n.21. See also Buckley v. Esquire, Inc., supra. See generally Trails West, Inc. v. Wolff, 32 N.Y.2d 221, 344 N.Y.S.2d 863 (1973); Cole Fisher Rogow, Inc. v. Carl Ally, Inc., 29 App.Div.2d 423, 288 N.Y.S.2d 556 (1st Dept. 1968), aff'd mem., 25 N.Y.2d 943, 305 N.Y.S.2d 154 (1969). Goldwater further held that upon such a motion in a defamation case,

as in all other actions, the court must resolve all ambiguities and draw all reasonable inferences in favor of the party opposing the motion. Goldwater, supra, 337, citing United States v. Diebold, Inc., 369 U.S. 654 (1962). See also Time, Inc. v. Ragano, supra.

Although summary judgment in a defamation action might serve the prophylactic function of sparing authors and publishers the chilling effect of litigation, "[t]his procedural weapon is a drastic device since its prophylactic function, when exercised, cuts off a party's right to present his case to the jury." Heyman v. Commerce and Industry Insurance Company, ____F.2d ____, Dkt. No. 75-7230 (2d Cir. October 24, 1975) (slip opinion).

As stated earlier, the Court finds that there exists a genuine issue as to a material fact, that is, whether Doubleday published the allegedly defamatory passages in Puche's book in reckless disregard of whether the statements therein contained were true or false. It is beyond the province of this Court to resolve such a factual controversy upon affidavits, depositions and exhibits, and grant summary judgment. Heyman v. Commerce and Industry Insurance Company, supra; Judge v. City of Buffalo, ____ F.2d ____, Dkt. No. 75-7314 (2d Cir. October 24, 1975).

CONCLUSION

Defendant Doubleday's motion for summary judgment is denied.

So Ordered.

Dated: New York, New York
November 12, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

## F O O T N O T E S

1. Gertz was a reputable lawyer. His detractors were ostensibly extremist followers of the late John Birch, whose activities are resented by those who normally would be expected to champion First Amendment freedoms. Defendants in Gertz in their publication accused Gertz of being an architect of the "frame-up" of the policeman, of having, himself, an extensive police record, having been a "Communist-fronter" and a member of the "Marxist League for Industrial Democracy, originally known as the Intercollegiate Socialist Society, which has advocated the violent seizure of our government."

2. Whether an attorney is a public figure clearly depends upon the circumstances of the particular case. An attorney does not become a public figure or public official solely by reason of his membership in the bar of a state. In Belli v. Curtis Publishing Company, 25 Cal.App.3d 834, 102 Cal. 122 (1972), the plaintiff attorney conceded that he was a public figure and subject to the New York Times rule. But see, Belli v. Orlando Daily Newspapers, Inc., 389 F.2d 579 (5th Cir. 1967), cert. denied 391 U.S. 825 (1968). In Aronstein v. The Village

Voice, Inc., N.Y.L.J., February 3, 1975, p.2, col.2 (Sup.Ct., N.Y. County), the Court did not find it necessary to determine whether a lawyer who was acquitted of criminal charges and who, the allegedly libelous article charged, had a "sleazy reputation among his fellow lawyers" and had "specialized in defending Mafia members" was a public figure since the Court found that the complaint which pleaded actual malice was sufficient to state a claim even under the New York Times standard. Frink v. McIldowney, 29 N.Y.2d 720, 325 N.Y.S.2d 755 (1971) held that an attorney, employed by a town to render legal opinions on matters of town interest, was a public official.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

A. E. HOTCHNER,

Plaintiff,

- against - 74 Civ. 5516

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

- - - - - - - - - - - - - - - - - - - -x

B e f o r e:

HONORABLE CHARLES L. BRIEANT, JR.,

District Judge.

New York, New York
December 29, 1975 - 10:00 a.m.

A p p e a r a n c e s:

MERVIN ROSENMAN, Esq.
Attorney for Plaintiff

Messrs. SATTERLEE & STEPHENS
Attorneys for Defendants
277 Park Avenue
New York, New York
BY: ROBERT MARSHALL, Esq., of Counsel.

MR. ROSENMAN: Your Honor, I am Mervin Rosenman, the attorney for Hotchner, appearing on the motion to amend the complaint, and Mr. Marshall is appearing on the motion for certification pursuant to 1291(b).

With regard to the motion to amend the complaint, your Honor --

THE COURT: I might as well deal with that first, Mr. Rosenman.

MR. ROSENMAN: Yes, your Honor.

As my motion papers point out, it was only after the complaint was originally amended the first time that I learned from Satterlee & Stephens that with regard to the British publication, they had written a letter saying since there was no injunction against the publication, go ahead and publish the British edition.

THE COURT: You see, I never understood that point. That point was raised to me before.

MR. ROSENMAN: I don't think it was, your Honor.

THE COURT: I met with that point before in this matter and I never understood it because what they told British publisher was the truth, there was no injunction and they were maintaining a position with this Court and with you and with your client, and also with the British publisher, I suppose, that this book was not

actionable.

That is still their position, and I don't see that pursuing that position by telling the Englishmen the truth, namely, that there was no injunction and they saw no reason why they could not publish, I don't see why that gives rise to a claim.

MR. ROSENMAN: Certainly we could not have gotten an injunction if we came in and asked for it, if we had known of the British publication, which we didn't know at that time.

THE COURT: You may have a case in England, and they may be co-defendants in your English case --

MR. ROSENMAN: That would be for libel in England --

THE COURT: And that will be judged by English law, won't it?

MR. ROSENMAN: My affidavit clearly states we recognize that.

On the issue of exemplary damages, your Honor --

THE COURT: I take it exemplary damages and punitive damages are no different?

MR. ROSENMAN: Yes.

THE COURT: While you and I and Mr. Callagy have discussed this Gertz case probably to the point where

all of us are tired of it, there is very strong dictum in the Gertz case, and it appears to me from reading that that under the circumstances of this case there will be no punitive or exemplary damages allowed, and the issue of punitive or exemplary damages will not be charged to the jury, and there is no need to have it in the pleadings.

MR. ROSENMAN: Perhaps not in the libel case, though I'm not sure I fully agree with you, but certainly the second cause of action --

THE COURT: Your dispute is not with me. Your dispute is with the Supreme Court.

MR. ROSENMAN: As to your reading of the Gertz case, your Honor.

THE COURT: Well, all right. Would you like me to read you the language?

"We also find no justification for allowing awards of punitive damages against publishers and broadcasters held liable under state defined standards of liability for defamation."

He goes on and says why, reading from page 350 of 418 U. S., and the whole balance of the page is devoted to this issue, and it says in short "the private defamation of plaintiff who establishes liability...may recover only such damages as are sufficient to compensate him for actual

injury."

A fortiari the plaintiff who is a public figure, or is in the context of this case a public figure, which I have held that Mr. Hotchner is, can only recover compensatory damages. So I don't plan to charge the jury as to punitive damages or so-called exemplary damages, and I see no need to permit the complaint to be amended to allege that fact. V (p4-5)

However --

MR. ROSENMAN: Your Honor --

THE COURT: -- you do have some typographical errors in your complaint. Those certainly may be corrected.

MR. ROSENMAN: Your Honor, the second cause of action deals with the right of privacy and --

THE COURT: I don't care what you call it, I think it has to be treated in the same fashion.

MR. ROSENMAN: I think there is a difference. Just as Cantrell went on the right of privacy and not on the libel aspect, so this case could well go, and I would like to preserve my right so that if at the trial I move for instructions on exemplary damages and your Honor denies it, at least I have a record on appeal.

THE COURT: That you may certainly do.

My suggestion to you is that you bring in

requests to charge and that you put the issue of exemplary damages on either or both claims in a separately numbered paragraph of your proposed instructions so that your record will be clear. You can docket and file those requests to charge and the record will be amply protected on that.

MR. ROSENMAN: Your Honor, I can't see the harm in allowing me to amend my complaint. That doesn't in any way influence your Honor in future charges to the jury based on the evidence.

THE COURT: All right. Suppose --

MR. ROSENMAN: There should be liberality in amending the complaint.

THE COURT: Suppose you were to amend it and then they move to strike that paragraph or dismiss that aspect of the claim, or they will make some other motion and --

MR. ROSENMAN: Then it is clearly before the Court. I don't want to be met -- you are asking for instructions on exemplary damages, but you are --

THE COURT: You won't be met with that issue. You may make a proper application to the Court during the trial to charge punitive damages on either or both claims, which I am telling you right now I will decline to do, and you may have an exception.

You can make that during your trial record so

there will be no question about it.

MR. ROSENMAN: Then will I be allowed to offer evidence of British publication as the complaint seeks I can? I don't think I can, your Honor, without your amending the complaint.

THE COURT: I think perhaps you could. But I wonder what the relevance is, that's what has been a problem for me throughout this discussion.

MR. ROSENMAN: If I could submit, if you will allow me to amend the complaint, then when I offer evidence with objection by Doubleday, your Honor can exclude it. But at least then I have a complaint which I am offering proof as to.

THE COURT: They defamed your client, didn't they, according to your theory of this case, they defamed him?

Once they defamed him he has a cause of action for all damages flowing from the defamation, and the fact that they told the Englishmen what I think you and I must agree is the truth may have a bearing on their liability in England, but I don't see that it adds to the claim in this court in any way.

MR. ROSENMAN: Your Honor, the claim is that they acted in reckless disregard. Your Honor has found in

your order that that is a question that goes to the jury. You say to the jury they should have, even before the publication of the book, they should have done the necessary investigation to overcome that burden. They didn't, and as evidence of that a fortiari when the lawsuit was started and they had knowledge of the alleged falsity, they nevertheless blithely said to the British publisher, "Go ahead, there was no injunction."

THE COURT: That was the truth. Now, if they are --

MR. ROSENMAN: They were then on knowledge of the falsity, alleged falsity.

THE COURT: If they are an aider and abettor in England, they can be sued in England.

MR. ROSENMAN: I think it is relevant to the jury in terms of exemplary damages, your Honor --

THE COURT: I decline to take it. I am not taking anything on exemplary damages.

I would certainly permit you to correct the typographical error which you cite on page -- in subparagraph V of paragraph 3 of your own affidavit sworn to December 2. That you may certainly do. I don't know that it is necessary.

I will direct on this record that it be deemed

corrected as set forth in that subparagraph V. All right.

MR. ROSENMAN: Is that the order of the Court?

THE COURT: That will be the order of the Court, that the motion to amend is denied and that the Court declines to charge exemplary or punitive damages to the jury in this case.

While I think your record will be protected by the pretrial hearing today, and this hearing on the motion, nevertheless, you may, and probably should, renew your application by your request to charge and the Court will make a record of it at the time of the trial.

Whether I will permit evidence as to their dealings with the English publisher after publication is something I am reserving on now to decide in the full context of the trial.

If action subsequent to publication appears under the entire trial record to be probative of their state of mind or their intentions when they published, then I might admit it into evidence; if not, I will not. So I am leaving that question open to be decided at the trial, and you can make your offer of proof at that time, in the absence of the jury, but you can make an offer of proof and I will rule on it.

So I am going to endorse the motion to amend the

complaint denied except as specifically directed on this hearing.

MR. ROSENMAN: What you dictated to the reporter, will that appear on the endorsement to the motion?

THE COURT: I don't think it is necessary. We are all agreed on what you can do as far as the typographical error, and you should not need to even ask for that.

All right.

MR. MARSHALL: Your Honor, my name is Robert Marshall. Mr. Callagy sprained his ankle and is on crutches today and could not make it down.

THE COURT: I am sorry he is not here. I wanted to take up with him some of the matters which were set forth in the motion here.

MR. MARSHALL: I am fully familiar with the motion, your Honor, and if --

THE COURT: You know, either the Court was not clear in its decision or else you have misinterpreted, or else you are doing some intentional or unintentional nitpicking, but I want to make it very clear to you on this record that I am charging this jury basically in accordance with the New York Times case and the Curtis Publishing case and the St. Amant case, and all that the decision was intended

to say was that upon the facts presented on the summary judgment motion, a reasonable juror acting reasonably could have reached a conclusion that the work was published with actual malice, as actual malice is defined by the Supreme Court decisions, namely, knowledge of the falsity of the published statements or reckless indifference as to whether they were true or false. I thought the decision was clear on that.

The inferences to follow from what they did or didn't do raise jury questions. The jury can decide whether they published with actual malice or not. And my own views on that subject are totally unimportant and I have injected no new issue into the law of defamation, and there is no no controlling question of law here, with the possible exception of whether the rules of law are different on a summary judgment motion in a defamation action. That is the only point I see in this whole case. If I am wrong on that I wish you would tell me.

MR. MARSHALL: If that is your position, your Honor, we accept it and request that you could perhaps correct and --

THE COURT: I think the opinion is clear on that score. I don't see anything in the opinion which purports to modify the Sullivan rule.

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MR. MARSHALL: Specifically, on page 19, the first paragraph which is the only --

THE COURT: I will look at it.

MR. MARSHALL: You quote St. Amant as defining reckless conduct, and then, your Honor, the order cites the evidence that the order is relying on, "The exchange of memoranda and other correspondence could be construed as evidencing an awareness by Doubleday that Puche intended to..." --

THE COURT: I am looking at it.

MR. MARSHALL: -- "...in the light of their knowledge of Puche's low regard for Hotchner, Doubleday's employees were culpably reckless in not investigating further." And that is the test that we take exception from and request an appeal from, if that is the test that your Honor is --

THE COURT: I don't think that that test is stating any different test. To call it culpably reckless is no different than the basic language of all of these cases which we have been talking about where --

MR. MARSHALL: Not the words "culpably reckless," but finding culpable recklessness from evidence of an awareness that an author intended to portray a subject in unfavorable light.

We feel that is insufficient and has never been held to amount to culpable recklessness and would --

THE COURT: It is some evidence, isn't it? If they find that that would be some evidence from which jurors on an entire trial record could find that there was a reckless indifference as to whether it is true or false.

MR. MARSHALL: I believe, your Honor, that would totally withdraw the constitutional privilege. In almost every libel action it is clear on its face the author had a low regard for the subject he is writing about.

THE COURT: Not necessarily. I don't think that statement follows at all.

You see, Doubleday is an innocent publisher, or portrays itself as the innocent publisher of the work of Mr. Puche, and if they published the work of Mr. Puche without knowledge of the falsity of the published statements, and without reckless indifference as to whether the published statements were true or false, then they are exonerated in this case. Isn't that clear?

If the contrary appears to the jury by a preponderance of the credible evidence, then your client can be held in this case; that is really all that the memorandum purports to tell you.

MR. MARSHALL: I agree with that statement of

the law, but, unfortunately, that is not the way that we believe it is set out here.

THE COURT: I will deny your motion also and I will stand on my analysis made today of what is intended to be conveyed by the memorandum decision, and I think you are reading into it something which is not there.

The case has to be tried in accordance with the statements of the Supreme Court as to whether actual malice was present assuming falsity and actual malice will be defined by this Court as meaning knowledge of falsity or a reckless indifference as to whether the statements were true or false.

The presence of such a reckless indifference can be inferred from all the evidence in the case. It is a question for the triers of the fact.

Off the record for a moment.

(Discussion off the record)

THE COURT: I want you to give me your requests to charge, and I would like you to do that within a reasonable time frame, which I will now fix.

I take it discovery is concluded?

MR. ROSENMAN: Yes, except that Mr. Marshall is going to get me one particular thing that is promised.

THE COURT: What is it?

MR. ROSENMAN: The number of copies of the book that were sent to reviewers, which I asked for a while ago.

THE COURT: When will you have that?

MR. MARSHALL: We can have that the following week, taking into consideration that people may not be here this week.

THE COURT: By the 15th of January.

When can I have your requests to charge, Mr. Rosenman?

MR. ROSENMAN: Well, your Honor, I hadn't started to prepare them, so --

THE COURT: I know that. I am asking you to start. I am asking you to tell me when they will be ready.

I want to get this case in and try it, if I can't settle it, you see.

MR. ROSENMAN: Would the middle of January be all right?

THE COURT: I think so. How soon thereafter will I have yours, Mr. Marshall?

MR. MARSHALL: Two weeks thereafter.

THE COURT: All right. I would also like for you, Mr. Rosenman, to give your adversary a list separately numbered of uncontroverted facts which are stipulated as true for purposes of this case. That will take the place of

a pretrial order.

If you don't want to do that, you can all go have a pretrial order, but the magistrates won't be available to you so you will have to work it out among yourselves and come in and see me.

You will proceed by a list of facts that will be stipulated for purposes of this action, to save the time of the trial, and if you have any facts that you want, Mr. Marshall, you are to do the same thing.

If there are any of his stipulated facts that you don't concede, I want you to so advise him. Then I will have a final pretrial conference with you where I will wrap up these elements and get ready to try the case.

I think you ought to come back and see me in the first week of February and all these things should be accomplished.

I will try the case during February.

MR. MARSHALL: I am going to be away between the 5th and 12th.

THE COURT: Do you want to come on the 4th then, or is Mr. Callagy coming? I don't care. I will take you on the 4th at 9:30.

That will be a final pretrial conference. At that time these things are to be resolved and in my possession

so I can work with them.

Try and deliver them a day or two ahead of time in chambers, if you can.

Thank you, gentlemen.

(Time noted: 10:30 a.m.)

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

'74 Civ. 3510

ORDER TO SHOW CAUSE

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third Party Defendant.

Upon the annexed affidavit of Robert M. Callagy, sworn to April 19, 1976, and upon all prior pleadings and proceedings heretofore had herein, and upon hearing counsel for the defendant Doubleday & Company, Inc., it is

ORDERED, that the plaintiff show cause in Room 619 of the U.S. District Courthouse, Foley Square, New York, New York, on the 23rd day of April, 1976 at 9:30 in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made, pursuant to Rules 103 and 104 (a) and (c) of the Federal Rules of Evidence, precluding plaintiff from offering at the trial of this action any English translation of the Spanish work Hemingway Entre la Vida y la Muerta which was not before Doubleday

at the time it published Hemingway in Spain on the grounds that any such translation or portion thereof is irrelevant to the issues in this case and can have the effect of seriously prejudicing defendant Doubleday, inasmuch as the only issue in this case is whether plaintiff has been defamed by certain statements appearing in a book entitled Hemingway in Spain and whether Doubleday published such statements with knowledge of their falsity or reckless disregard of the truth, and it is further

ORDERED, that personal service of a copy of this order and the papers upon which it is based upon plaintiff's counsel Mervin Rosenman, Esq. at his offices on or before April 19, 1976 at 5 p.m. shall be sufficient service of this order.

Dated: New York, New York
April 19, 1976.

Issued at 3:45 P.M.

Charles L. Brieant
U.S.D.J.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION TO PRECLUDE PLAINTIFF FROM OFFERING HIS OWN TRANSLATION AT TRIAL

- - - - - - - - - - - - - - - - - - - - - - -x

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third Party Defendant.

- - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ROBERT M. CALLAGY, being duly sworn, deposes and says:

1. I am a member of the firm of Satterlee & Stephens, attorneys for defendant, Doubleday & Company, Inc. ("Doubleday"). I make this affidavit in support of a motion by Doubleday for an order precluding plaintiff from offering at the trial of this action an English translation of any portion of the original Spanish work Hemingway Entre la Vida y la Muerta which was not before Doubleday at the time it published Hemingway in Spain on the grounds that any such translation is irrelevant to the

issues in this case and the introduction of same into evidence could amount to reversible error should the jury find, based on such translation, that Doubleday published with reckless disregard of the truth.

2. In this action which seeks damages for libel and invasion of privacy, plaintiff seeks damages for disparaging statements against him in an English translation of the Spanish work which Doubleday published in 1974. Doubleday purchased the rights to publish the English language edition from Ediciones Destino in 1970. Thereafter Doubleday for a flat fee engaged Helen Lane, an independent contractor, to prepare a literary translation of the Spanish work. As is the custom of Doubleday and also the translator, after Hemingway in Spain was published, both copies of the translation prepared by Helen Lane for Doubleday and the copy retained by her were discarded. The only pages that were retained were eight pages which were the subject of discussions between Doubleday's Editor and its Contracts Department, which discussions resulted in Doubleday's toning down or eliminating certain statements about the plaintiff.

3. Plaintiff's counsel now takes the position that plaintiff is entitled to introduce a translation procured by him from another translator (Mr. Oppenheim) to show what Doubleday's translator (Mrs. Lane) knew or should have known was said about the plaintiff in the Spanish edition, even where the original Lane translation is available.

4. Oppenheim's translation does not and can not establish what Doubleday knew or should have known had been said about the plaintiff in the Spanish edition. It is doubtful that it even

can establish what Mrs. Lane knew, as there is room for disagreement among qualified literary translators as to the English equivalent of colloquial Spanish such as that of Mr. Castillo Puche. More importantly, the Oppenheim translation is irrelevant to the issues in this case. To the extent that the original translation is available, the jury is entitled to see it. To the extent that it is not, Doubleday's Editor can be asked about its whereabouts.

5. What plaintiff is trying to do by the introduction of another translation is to transform the case from one involving Hemingway in Spain to one involving statements which plaintiff's own translator may feel the original Spanish edition contained. The only statements on trial in this case should be the statements which appear in Hemingway in Spain on which plaintiff bases his claims.

6. In view of the total irrelevance of plaintiff's Oppenheim translation and the fact that its introduction could amount to prejudicial error should the jury find against the publisher based on their having considered a translation not before the publisher, we respectfully request that this Court enter an order precluding plaintiff from offering at trial any translation not before Doubleday at the time it published Hemingway in Spain. In the event the Court declines to do so, we request by way of alternative relief that the Court immediately certify an order respecting the admissibility of this translation for purposes of appeal to the Second Circuit since to do otherwise could

very well require this case be tried twice.

Robert M. Callagy

Robert M. Callagy

Sworn to before me this

19th day of April, 1976.

Mary A. Tarantino

Notary Public

MARY A. TARANTINO
Notary Public, State of New York
Qualified in Kings County
Certificate Filed in Kings County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

AFFIDAVIT IN OPPOSITION

- - - - - - - - - - - - - - - - - - - - - - -x

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third Party Defendant.

- - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

MERVIN ROSENMAN, being duly sworn, deposes and says:

1. I am the attorney for plaintiff A.E. Hotchner, and make this affidavit in opposition to Doubleday's motion brought on by order to show cause to preclude plaintiff from offering at the trial herein the English translation of any portion of the original Spanish work, "Hemingway, Entre La Vida Y La Muerte".*

2. There is patently no merit to this twelfth-hour motion which perforce must be construed as a rather obvious attempt to delay the trial herein. Your Honor has had the subject before him three times, and has ruled three times against the relief sought in this motion.

*The motion papers, and all of the prior papers submitted to this Court, call this the "Oppenheim Translation". Mr. Oppenheim informed me just this week that he will not be available to testify. Therefore, as I informed Mr. Marshall of Satterlee & Stephens the next day (April 20th) on the telephone, I am in the process of obtaining a new translation which I am informed will be substantially the same as Oppenheim's. For the purpose of this affidavit I will continue to refer to it as the "Oppenheim Translation".

(a) At the pre-trial conference on March 1, the notes taken by Simon J. Hauser, my associate, state:

> "Judge Brieant said he would not permit counsel to bicker three days before the jury and that he wanted a stipulation as to accuracy (relevance of the Oppenheim Translation, which Callagy objected to, could await a ruling at the trial but the Judge tended to concur with MR's assertion that it bore on 'reckless disregard')".

(b) At the pre-trial conference on March 19, Your Honor made it clear that the Oppenheim Translation would be admitted but it could be countered by Doubleday having Mrs. Lane re-translate the work as to the pages of the translation which were no longer in existence. As I maintained:

> "The epithets in the Spanish version were, of course, relevant on the issue of 'reckless disregard' and was recognized as such by the Judge in his decision denying summary judgment".

Mr. Hauser's notes state:

> "The Judge stated that while his knowledge of Spanish was very limited, he strongly doubted that a word like 'shit-licker' would be translated by such a mild word as 'fawner'."

and further state:

> "The Judge also said that he thought Callagy should mail Mrs. Lane the 'outline' of the varying translations of the 'fighting words' and ask her whether the Oppenheim version was a fair translation."

(c) At the last pre-trial conference herein on April 6, the same issue was once again raised by defendant's counsel. The Court stated that he was going to permit introduction of the Oppenheim Translation as bearing on the issue of "reckless disregard" and further pointed out to Mr. Marshall that otherwise, if the Oppenheim Translation were excluded, on appeal it could be held that it was relevant on "reckless disregard" and then there would be a need for a second trial. The Court then ordered Doubleday to prepare a columnar comparison, similar to the comparison prepared as to the Oppenheim Translation, as to both Mrs. Lane's re-translation and that of any new translator Doubleday might select.

3. In addition, there is no merit to the request for certification

by the Court to the Court of Appeals for the Second Circuit. Defendant Doubleday fails to establish that the question sought to be certified meets the absolute requisites. There is not here involved "a controlling issue of law as to which there is substantial ground for difference of opinion"; "an immediate appeal from the order will not materially advance the ultimate termination of the litigation", and the question involved is not an exceptional one which may "contribute to the determination, at an early stage, of a wide spectrum of cases".*

4. For these reasons it is respectfully submitted that defendant Doubleday's motion should be denied in all respects.

Mervin Rosenman

Sworn to before me this

22nd day of April, 1976.

Simon J. Bonner

SIMON J. HA[illegible]R
Notary Public, State of New York
No. 60-[illegible]
Qualified in Westchester County
Term Expires March 30, 1978

*See cases cited and quoted in plaintiff's memorandum dated December 22, 1975, successfully opposing defendant Doubleday's previous motion for certification.

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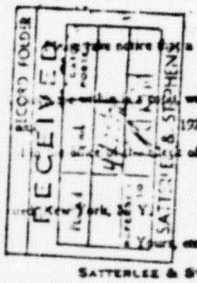


, duly entered and

, 197

SATTERLEE & STEPHENS

Attorneys for

277 PARK AVENUE

Borough of Manhattan New York, N. Y. 10017

Attorneys for

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third Party Defendant.

(ORIGINAL)

ORDER TO SHOW CAUSE

SATTERLEE & STEPHENS

Attorneys for Doubleday & Company, Inc.

277 PARK AVENUE

BOROUGH OF MANHATTAN

NEW YORK, N. Y. 10017

(AREA CODE 212) 826-0100

Due and timely service of a copy of the within

Copy received April 19/76 at 4:52 PM

is hereby admitted.

Dated, New York, N. Y. 197

Attorney for

U.S. DISTRICT COURT FILED APR 23 1976 S.D.C.T.N.Y.

APR 24 1976

Motion denied after hearing counsel

SO ORDERED

Charles L. Brieant

U. S. D. J.

BEST COPY AVAILABLE

Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -X

A. E. HOTCHNER, :

Plaintiff, :

-against- :

JOSE LUIS CASTILLO-PUCHE and :
DOUBLEDAY & COMPANY, INC.,

Defendants. :

- - - - - - - - - - - - - - - - - - - - -X

74 Civ. 5516-CLB

SPECIAL VERDICT

AS TO FIRST CAUSE OF ACTION

1. Regarding the passage (beginning on p. 81):

"This was yet another point of resemblance between Ernesto and Don Pio Baroja, whose intimates, for the most part, were also an irritating bunch of mediocre, coarse, vulgar sycophants.

Copying the example of the toreros, Ernesto surrounded himself with a sort of entourage of riff-raff. He had many very respectable friends, but was also surrounded by many hangers-on, a whole raft of toadies whom he couldn't do without but nonetheless secretly despised. They were the last remaining traces of a certain ambition of Ernesto's, to be at once a prince and a rogue, and in a certain sense they made him feel invulnerable."

a. Do you find that this passage refers to A. E. Hotchner?

Yes _____ No ✓

(If your answer is No, omit the balance of question 1 and proceed to question 2).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes _____ No _____

(If your answer is No, omit the balance of question 1 and proceed to question 2).

c. Do you find that the statement is false in substance?

Yes _____ No _____

(If your answer is No, omit the balance of question 1 and proceed to question 2).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes _____ No _____

2. Regarding the passage (beginning on p. 82):

"It was Ordonez, as I remember, who first called him 'Freckles', and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it was sickening."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 2 and proceed to question 3).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 2 and proceed to question 3).

c. Do you find that the statement is false in substance?

Yes ✓ No _____

(If your answer is No, omit the balance of question 2 and proceed to question 3).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No ____

3. Regarding the passage (beginning on p. 82):

"The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 3 and proceed to question 4).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 3 and proceed to question 4).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 3 and proceed to question 4).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

4. Regarding the passage (beginning on p. 82):

"The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, people such as Juanito Quintana and even Ordonez. Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite. But he put up a very good front as Ernesto's mild-mannered, obedient servant."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 4 and proceed to question 5).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 4 and proceed to question 5).

c. Do you find that the statement is false in substance?

Yes ✓ No _____

(If your answer is No, omit the balance of question 4 and proceed to question 5).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No _____

5. Regarding the passage (beginning on p. 82):

"Ernesto rather liked Hotchner's funny stories and put up with his drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 5 and proceed to question 6).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 5 and proceed to question 6).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 5 and proceed to question 6).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

6. Regarding the passage (beginning on p. 83):

"Hotchner did his best all summer long to make the imaginary duel between Ordonez and Dominguin a real one; in moments when Ernesto was tense or had no one around for company, he was half convinced he was witnessing a genuine 'civil war' in the bullfight world, though I for my part thought the whole affair was a big laugh, and almost everyone else did too.

As an expert at grinding out publicity in the United States, Hotchner knew what a big splash Ernesto's articles were going to make, and was already bragging about what a coup they would be.

I felt very bad about those Life articles, called The Dangerous Summer, to tell the truth, because it seemed to me that the whole farce was beneath Ernesto and that he should have refused to have anything to do with it.

'Freckles' was never open and aboveboard. His mild manner and his air of shy diffidence seemed to me quite a cover-up for his exploitation of Ernesto." —

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 6 and proceed to question 7).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 6 and proceed to question 7).

c. Do you find that the statement is false in substance?

Yes ✓ No _____

(If your answer is No, omit the balance of question 6 and proceed to question 7).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No _____

7. Regarding the passage (beginning on p. 161):

"Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.'

'I can see that he's very fond of you,' I replied.

Then, a little while later, he'd whispered, 'I don't really trust him, though.'"

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 7 and proceed to question 8).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 7 and proceed to question 8).

c. Do you find that the statement is false in substance?

Yes ✓ No ____

(If your answer is No, omit the balance of question 7 and proceed to question 8).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No ____

158a

8. Regarding the passage (beginning on p. 161):

"Remembering what Ernesto had said about Hotchner naturally reminded me of the Irish girl who had come to play a more and more important role in that cast of kooks at the San Fermin fiesta. 'Freckles' had kept whispering in Ernesto's ear, and Ernesto had tried to convince himself that this rather ordinary-looking girl with a mysterious, charming personality could fill the great empty spot in his heart. It was really a rather cruel irony. At one point he took me aside and said, 'You keep eying her.'

'Who, me?'

'You seem quite taken with her.'

'Oh Ernesto! Come on!'

'Listen, she's all yours.'

But all this was merely the opening scene in the opera buffa. Next came the enthusiastic chorus of girl students who kept pretending they were innocent young things. Ernesto said to me: 'Where do you suppose their maidenheads went?'"

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 8 and proceed to question 9).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes _____ No ✓

(If your answer is No, omit the balance of question 8 and proceed to question 9).

c. Do you find that the statement is false in substance?

Yes _____ No _____

(If your answer is No, omit the balance of question 8 and proceed to question 9).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes _____ No _____

159a

9. Regarding the passage (beginning on p. 161 and continuing on p. 162):

"Mary Hemingway knew very well what was gold and what was mere tinsel in the bullfight world, what was theatrical show and what was truly courageous and noble. Mary and Ordonez knew the difference between picturesque rascals and crass opportunists. At one point Antonio said to Ernesto, 'I can see that 'Freckles' is a great help to you.'

And Ernesto replied, 'Freckles' is tops, in my estimation.'

"And your 'nigger' is a hard worker.'

'He's my bodyguard.'

'But what would you be without Mary?' Antonio said slyly. And then he added, 'You must pay her very well.'

'I don't think she has any reason to complain', Ernesto replied.

'She does more for you than anybody,' Antonio went on. 'What would you be without her.'

'It would be absolute disaster,' Ernesto replied. And added, 'What would you be without Carmen?'

'A total wreck,' Ordonez said.

'We'd both be total wrecks," Ernesto said.

'That's right--we'd both be total wrecks, Ordonez agreed."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 9 and proceed to question 10).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 9 and proceed to question 10).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 9 and proceed to question 10).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

160a

10. Regarding the passage (beginning on p. 162):

"I found all these memories amusing, just as it was very amusing to remember Quintana, a great gentleman and one of Ernesto's oldest friends, laughing indulgently; or Matias sitting quietly watching, for all this commotion that Ernesto was the center of struck him as a sort of absurd carnival. Matias knew publicity hounds and spongers when he saw them."

a. Do you find that this passage refers to A. E. Hotchner?

Yes _____ No ✓

(If your answer is No, omit the balance of question 10 and proceed to question 11).

b. Do you find passage defamatory of A. E. Hotchner?

Yes _____ No _____

(If your answer is No, omit the balance of question 10 and proceed to question 11).

c. Do you find that the statement is false in substance?

Yes _____ No _____

(If your answer is No, omit the balance of question 10 and proceed to question 11).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes _____ No _____

161a

11. Regarding the passage (beginning on p. 182):

"At one point, Ernesto turned to me and whispered in my ear: 'Hotchner's a good friend of mine, but he's a sharp customer.'

I thought Ernesto meant that as a compliment, and I said, 'Yes, it's quite obvious he's an awfully clever fellow.'

'Yes, he's terribly intelligent, but he's also out for number one.'"

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question // and proceed to question 12).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question // and proceed to question 12).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question // and proceed to question 12).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

162a

12. Regarding the passage (beginning on p. 185):

"Juanito Quintana turned up just then, and I noticed that Hotchner took an instant dislike to him. I also noticed that the moment Juanito appeared, Ernesto paid no attention to any of the rest of us, including the women, and the two of them immediately began talking of bullfighting. *** Hotchner's nose was obviously out of joint on seeing what intimate friends the great maestro and this Celto-Iberian whom Hotchner considered a mere matador's peon were***"

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No _____

(If your answer is No, omit the balance of question 12 and proceed to question 13).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes _____ No ✓

(If your answer is No, omit the balance of question 12 and proceed to question 13).

c. Do you find that the statement is false in substance?

Yes _____ No _____

(If your answer is No, omit the balance of question 12 and proceed to question 13).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes _____ No _____

163a

13. Regarding the passage (beginning on p. 196):

"The most standoffish and wary of the group was 'Freckles' Hotchner, lolling in his chair looking like a crafty gypsy and watching all of us with that strange expression of his, half lustful and half on the defensive. He was laughing and applauding and singing and taking it all in, but despite the easy air of easy camaraderie, it was quite noticeable that he was subtly playing the role of ringmaster. He was very careful to be properly attentive to Mary and extremely polite to her and the other guests, but he kept his eye on Ernesto every minute, watching he every move and listening to his every word, especially when he was approached by journalists or photographers."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 13 and proceed to question 14.

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 13 and proceed to question 14.

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 13 and proceed to question 14.

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

164a

14. Regarding the passage (beginning on p. 196):

> "'Freckles was in complete control of the situation, and I wasn't at all surprised that he had earned lots of money for Ernesto by signing him up with the television networks and mass-circulation American magazines, though I was quite certain Hotchner had been motivated by something other than worshipful admiration for a great writer."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 14 and proceed to question 15).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 14 and proceed to question 15).

c. Do you find that the statement is false in substance?

Yes ✓ No ____

(If your answer is No, omit the balance of question 14 and proceed to question 15).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No ____

15. Regarding the passage (beginning on p. 203):

> "And the two or three times that Ernesto tried to explain to me why the duel between Dominguin and Ordonez was so important, the whole thing left me rather cold. I didn't really understand what all the fuss was about. They had managed to kindle some sort of fire that 'dangerous summer', but I never felt warmed by it. But 'Freckles' was delighted at the thought of how much money they were going to make, what with all the talk of a great rivalry between the two matadors."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 15 and proceed to question 16).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 15 and proceed to question 16).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 15 and proceed to question 16).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

166a

16. Regarding the passage (beginning on p. 318):

"Only a woman like Mary could have put up with those two ridiculous figures who hung around Ernesto every minute: Davis the jealous watchdog of his fame and fortune and Hotchner the exploiter of his reputation. Only Mary knew that Ernesto's real riches were intangible, and therefore she allowed him and Davis and Hotchner to do as they pleased. It is possible that his two American friends may have sincerely thought they were looking after his interests and protecting him."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 16 and proceed to question 17).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 16 and proceed to question 17).

c. Do you find that the statement is false in substance?

Yes ✓ No ____

(If your answer is No, omit the balance of question 16 and proceed to question 17).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ✓ No ____

167a

17. Regarding the passage (beginning on p. 320):

> "'What about Freckles? What would you do without him?' And Hotchner flashed 'Papa' a sly smile, playing the game with him along with the rest of them. Ernesto looked Antonio up and down and said, 'You're right--what would I do without Freckles? But if he's unhappy working for me, you can sign him up as one of your assistants. Maybe he's just now discovering his real vocation--he's thinking of running with the bulls, you know, and maybe he'll turn out to be a serious rival of yours some day.'
> 'We'll try him out, shall we?'"

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____ .

(If your answer is No, omit the balance of question 17 and proceed to question 18).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 17 and proceed to question 18).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 17 and proceed to question 18).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

168a

18. Regarding the passage (beginning on p. 324):

"Ernesto sometimes used to leave the door of his room open, so that Hotchner, his financial adviser, and Davis, his major-domo and bodyguard, could come and go as they pleased."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of question 18 and proceed to question 19.

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of question 18 and proceed to question 19.

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of question 18 and proceed to question 19.

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

169a

19. Regarding the passage (beginning on p. 325):

"Davis was an enormous help to him in preparing his text, and Hotchner was always close at hand to help him settle urgent business in the States."

a. Do you find that this passage refers to A. E. Hotchner?

Yes ✓ No ____

(If your answer is No, omit the balance of this question).

b. Do you find this passage defamatory of A. E. Hotchner?

Yes ____ No ✓

(If your answer is No, omit the balance of this question).

c. Do you find that the statement is false in substance?

Yes ____ No ____

(If your answer is No, omit the balance of this question).

d. Do you find that Doubleday published this passage with knowledge that it was false, or in reckless disregard as to whether it was true or false?

Yes ____ No ____

20. If you have answered Yes to questions a, b, c and d of any question among questions 1 - 19, answer the following questions:

a. Plaintiff is entitled to recover as compensatory damages .....$ 1 00
(fill in amount)

170a

b. Plaintiff is entitled to recover punitive damages of ..... $ 125,000
(fill in amount)

AS TO SECOND CAUSE OF ACTION

21. Did Doubleday use plaintiff's name for advertising purposes or for the purposes of trade?

Yes ✓ No _____.

(If answer is No, omit questions 22-26).

22. Was plaintiff's name used without his written consent?

Yes ✓ No _____

(If answer is No, omit questions 23-26).

23. W[illegible]. E. Hotchner portrayed in a false light [illegible]s a participant in fictionalized events o[illegible]onversations?

Yes ✓ No _____

(If answer is No, omit questions 24-26).

24. Do you find that Doubleday published Hemingway in Spain knowing that it portrayed A. E. Hotchner in a false light or as a participant in fictionalized events or conversation or in reckless disregard of whether it portrayed him in a false light or as a participant in fictionalized events?

Yes ✓ No _____

(If answer is No, omit questions 25-26).

25. If you have answered Yes to questions 21 through 24, answer the following questions:

a. Plaintiff is entitled to recover as compensatory damages .....$ 1
(fill in amount)

b. Plaintiff is entitled to recover punitive damages of .....$ 125,000
(fill in amount)

26. Answer this question only if you have filled in amounts in both questions 20 and 25:

a. The amount awarded as compensatory damages, if any in 25a includes the following amount allowed in 20a: .....$ NONE
(fill in amount)

b. The amount awarded as punitive damages in 25b, if any, includes the following amount allowed in 20b: .....$ 125,000
(fill in amount)

Dated: New York, New York
April 30, 1976

Stephanie Munoz
FORELADY

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125,002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

NOTICE OF MOTION

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

S I R S:

PLEASE TAKE NOTICE that upon all prior proceedings herein, the undersigned will move this Court before Honorable Charles L. Brieant, at 9:30 A.M. May 28, 1976, in Room 501 of the United States Courthouse, Foley Square, New York, New York, or as soon thereafter as counsel can be heard, for an order pursuant to Federal Rule of Civil Procedure 50(b) awarding defendant Doubleday & Company, Inc. judgment notwithstanding the verdict on the grounds that plaintiff failed, as a matter of law, to show by clear and convincing evidence that Doubleday published the statements complained of with knowledge of their falsity or with reckless disregard for their truth or falsity; or in the alternative for an order pursuant to Federal Rule of Civil Procedure 59(a) granting a new trial on each of the separate grounds that

the entire verdict is against the weight of the evidence, that the award of punitive damages is against the weight of the evidence, that the amount of the award of punitive damages is excessive, that the charge to the jury with regard to the second cause of action was incorrect as a matter of law, that the verdict with regard to the second cause of action is against the weight of the evidence, and that prejudicial error was committed in the conduct of the trial; and for such other and further relief as to this court seems just and appropriate.

May 14, 1976

Yours, etc.

Satterlee & Stephens

SATTERLEE & STEPHENS
Attorneys for Defendant
Doubleday & Company, Inc.
277 Park Avenue
New York, New York 10017

To: Mervin Rosenman, Esq.
Attorney for Plaintiff
41 East 57th Street
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| A.E. HOTCHNER, Plaintiff, -against- JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC., Defendants. | 74 Civ. 5516 (CLB) AFFIDAVIT IN OPPOSITION TO DEFENDANT DOUBLEDAY'S MOTION TO SET ASIDE JURY VERDICT |
| DOUBLEDAY & COMPANY, INC., Defendant and Third-Party Plaintiff, -against- EDICIONES DESTINO, S.L., Third-Party Defendant. | |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

Mervin Rosenman, being duly sworn, deposes and says:

1. My firm is the attorney for the plaintiff and I make this affidavit in opposition to defendant Doubleday's motion to set aside the verdict as excessive, or in the alternative, for a new trial.

2. As plaintiff's Memorandum of Law (p. 18A) submitted in opposition to this motion indicates, the jury may, in fixing punitive damages, consider counsel fees of the plaintiff.

3. While no evidence was offered specifically of plaintiff's counsel fees, the jury saw that extensive work was done by my firm:

(a) The trial lasted five days and occupied the full time of Simon J. Hauser and me;

(b) Plaintiff introduced 53 exhibits into evidence;

(c) Portions of the deposition taken of Kathryn Medina were read into evidence;

(d) The examination of plantiff and plaintiff's witnesses, as well as the cross-examination of defendant's witnesses, clearly showed extensive preparation by us, as well as an intensive reading and indexing of Hemingway in Spain.

Therefore, it is reasonable to infer that the jury could have considered counsel fees in arriving at its verdict.

4. The Court is aware, as the jury was not, of the extensive discovery and pre-trial motion practice herein. In its consideration of Doubleday's motion the Court should take note of the following additional facts:

(a) Through Friday, May 28, 1976, the time records of my firm disclose that I had spent 322 hours and Mr. Hauser had spent 245 hours. At hourly time charges, had we been able to bill therefor, the average charge would have been $90. per hour, or a total of $51,030. The Court is well aware of the fact that in such matters my firm is entitled to more than hourly time charges because of the contingent retainer.

(b) Plaintiff has actually paid $1,300. for disbursements and there are presently unbilled to him another $200.

(c) Plaintiff paid my firm the retainer of $1,500. against a contingent share of the recovery.

(d) An appeal by Doubleday, in view of the attitude previously expressed by its counsel, is highly unlikely.

5. In addition, there is still pending the third-party complaint by Doubleday against Ediciones Destino, S.L., a large and financially responsible Spanish publisher. It is probable that whatever judgment Doubleday is required to pay to the plaintiff, a substantial portion thereof will be contributed by Ediciones Destino.

For the foregoing reasons, as well as the reasons set forth in our accompanying Memorandum of Law, defendant Doubleday's motion should be denied in its entirety.

Mervin Rosenman

Sworn to before me this
1st day of June, 1976.

SIMON J. HAUSER
Notary Public, State of New York
No. 60-6207800
Qualified in Westchester County
Term Expires March 30, 1978

605.297
R.F.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516-CLB

MEMORANDUM AND ORDER

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

Brieant, J.

On April 30, 1976, a jury submitted its Special and General Verdict in this action brought under New York law to recover damages for (1) libel and defamation, and (2) invasion of privacy. The jury found for plaintiff A. E. Hotchner on both claims pleaded, and made a non-cumulative award on each claim, of $1.00 compensatory

damages, and $125,000.00 in punitive damages. Familiarity with the findings of the Special Verdict is assumed.

Entry of a judgment was deferred pending (1) motion by defendant Doubleday & Company, Inc. for judgment n.o.v. pursuant to Rule 50(b), F.R.Civ.P., or alternatively, pursuant to Rule 59(a), for a new trial on general grounds, and also excessiveness; (2) motion by plaintiff that the Court treat the trial record as an inquest and enter judgment against the defaulting co-defendant, Jose Luis Castillo-Puche ("Puche"); (3) motion by Puche to be relieved of his default and to dismiss the action as against him for want of personal jurisdiction; (4) resolution of the issues presented by the third-party complaint.

Doubleday's Motion

Most of the points raised in Doubleday's motion require little consideration. We rely on the trial record. At least insofar as the question of liability is concerned, we think the proof more than adequate to support the detailed and carefully considered special findings of our attentive and diligent jury. Our jury could and did find, as to those of Hotchner's claims which it found actionable, that clear and convincing evidence showed

Doubleday published with reckless disregard for their truth or falsity. Indeed, for the most part this clear and convincing evidence is documentary and comes from Doubleday's files, or was in possession of persons whose knowledge the jury could reasonably impute to Doubleday.

Even in a defamation case, involving as it does, the requirement that "actual malice" be proved by "clear and convincing evidence," a standard higher than the ordinary civil action but less than that of a criminal trial, every fair intendment should be given to a jury verdict. The Special Verdict shows intrinsically that our jury deliberated carefully, and made distinct and discerning determinations of fact, as the Constitution contemplates. More than a mere disagreement with or dislike for the result must be shown for us to disturb it.

The question of the amount of damages bears further discussion.

Apparently, the life style and experiences of Ernest Hemingway, and his classic works of fiction remain a matter of great interest to students and the public generally. He seems to be regarded as a latter day Kipling, whose India is Spain. Why

the life of this rich libertine and destroyer of wildlife should be of such great and continuing public interest a decade following his suicide, we cannot, and need not say.

Hotchner, as a result of his association with Hemingway, and his status as friend and confidante has achieved great personal fame and financial success. He has earned large sums of money, first as an adapter of Hemingway's fiction for motion pictures and television, and later as author of a best selling book recounting biographical anecdotes and his own experiences with Hemingway, entitled "Papa Hemingway," published before Puche's book. He has lectured on the subject, appeared on radio and television, and has since written a similar book about "Doris Day," a show-business personality, which was on the non-fiction bestseller lists at the time of trial.

The Puche book attacks his worth and status as an authority on Hemingway. That it did so was clear to Doubleday prior to publication. See, inter alia, Exhibits 7, 9, and 11.

Our jury perceived, correctly, that Hotchner had no direct financial loss due to the libel. He proved no lost employment or revenue directly flowing therefrom. His reputation as a

Hemingway savant, an asset from which he has earned much money, is tarnished somewhat, and continues so, because 891 copies of Puche's libelous book "Hemingway in Spain" are lodged in the reference shelves of libraries and colleges. During a radio interview in Pittsburgh, Hotchner was taxed for being a charlatan as to his relationship with Hemingway, by a student caller who quoted from and relied on defendant's book. To this extent, his capacity and status is damaged, and the award of some compensatory damages therefor would not have been unreasonable. Also, clearly Hotchner on our jury's version of the facts was entitled to some damages for humiliation and mental anguish. In weighing whether the punitive damages are excessive, we may also consider that the compensatory damages are inadequate. Undoubtedly our jury intended the punitive award to do double duty, and salve his humiliated amour-propre.

As guardians of the community conscience our jurors fixed the amount of damages. The totality of their actions is not unreasonable. Doubleday, a prominent publisher with a full staff and active list can hardly be compared with the impecunious theologian as to whom an award was reduced in Buckley v. Littell, Dkt. 75-7358 (2d Cir. June 30, 1976). As smart money here, the

amount is not excessive for this defendant.

Also, it is no windfall for this plaintiff who must pay income taxes thereon, as well as substantial legal fees, the full magnitude of which is not yet known. If we regard the social purpose of libel litigation as vindication, Hotchner's road to vindication was tortuous, costly and beset with travail. This is not a case like Buckley, supra, in which the publisher attempted to withdraw the offending work. Here there was no apology--indeed, instead of apologising, conceding Puche's falsity and litigating only the question of its own reckless disregard before the jury, Doubleday here hotly contested Hotchner's proof of falsity. On several occasions its efforts to do so led it to sponsor evidence or witnesses such as Valerie and Mary Hemingway which was counterproductive.

One more point requires discussion with respect to Doubleday's motion. The Buckley case, supra, was decided by our Court of Appeals after we had instructed the jury in this case. We find nothing therein which requires a new trial here. Buckley holds (p. 4608):

> "The law of defamation has in effect been rewritten in the light of the constitutional

imperatives.[3/] [3. See Eaton, The American Law of Defamation Through Gertz v. Welch, Inc. and Beyond: An Analytical Primer, 61 Va. L. Rev. 1349, 1364, et seq. (1975); Robertson, Defamation and the First Amendment: In Praise of Gertz v. Robert Welch, Inc., 54 U. Tex. L. Rev. 199 (1976). For one of the early recognitions of the transmutation of the law of defamation into a subject of constitutional imperatives see Kalven, The New York Times Case: A Note on the Central Meaning of the First Amendment, 1964, S. Ct. Rev. 191.

The district court, unfortunately, did not approach the task of interpreting the debatable meaning of the alleged libels in the light of the imperatives of 'uninhibited, robust, and wide-open' debate, New York Times Co. v. Sullivan, 376 U.S. 254, 271 (1964), but only discussed their implications once its search for the 'proper interpretation' of [the libelous Work] had ended. 393 F.Supp. at 925, 931, 942.] See Restatement (Second) of Torts, Special Note at 3 (Tent. Draft No. 21, 1975)."

We doubt the foregoing was intended to be construed literally. The Supreme Court does not impose or interpret the law of defamation; the states do. All that the Supreme Court has purported to do is set constitutional limits, unfortunately shifting ones, found mostly in dicta, beyond which a state is prevented by the Constitution from applying its own substantive law. Cf. Rosenbloom v. Metromedia, Inc., 403 U.S. 529 (1971);

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974); and Time Inc. v. Firestone, 44 U.S.L.W. 4262 (1976).

New York's state legislature could consign the libel action to that historical dustbin in which it has placed civil actions for criminal conversation, seduction, alienation of affections and breach of promise of marriage [§80-a New York Civil Rights Law, as enacted originally in Ch. 263 L. 1935]. Until it does so, the rule of Mencher v. Chesley, 297 N.Y. 94, (1947), and the other traditional rules retain their full force in this diversity case, subject only to the most recent applicable Supreme Court ruling on the Constitutional limitations. The only rulings of the latter sort which are relevant here are that as to a public figure, one additional element, solely federal, infelicitously described as "actual malice" must be present in the state tort, and it must be found to be so by a special standard or level of proof, "clear and convincing evidence," as was charged here.

Doubleday's motion is denied in all respects.

Castillo-Puche's Motion

Jose Luis Castillo-Puche was served with our process personally in Spain where he resides. He is a Spanish subject. He defaulted, but after the trial had begun, the record of which the Court intended to treat as an inquest, the attorneys for the Spanish Consul appeared specially for him, to vacate service.

In effecting service, plaintiff relied on §302 New York Civil Practice Law and Rules, applicable here under Rule 4(d)(7) and 4(f), and Legros v. Irving, 38 A.D.2d 53 (1st Dept. 1971), and its progeny.

These cases are distinguishable. Here, Doubleday acquired the defamatory work from Ediciones Destino, S.L., not from Puche. On the entire trial record, Puche's presence and his activities in NewYo were minimal. His correspondence with Doubleday from Spain consenting to revisions, and his visit to its New York office, correctly styled as a mere courtesy call in the affidavit of Kathryn B. Medina, sworn to May 27, 1976, do not rise to the level of "doing business" in New York under §302(1), CPLR. In the other subsections of §302, actions for defamation are specifically excluded.

The Third-Party Complaint

The Court regards this pleading as abandoned and it is dismissed without prejudice.

Conclusion

The Clerk of the Court, pursuant to Rule 58, F.R.Civ.P. shall enter judgment in favor of plaintiff against defendant Doubleday & Company, Inc. for the sum of $125,001.00 and taxable costs, and that the complaint is dismissed without prejudice as to defendant Jose Luis Castillo-Puche for want of personal jurisdiction over that defendant, and that the Third-Party Complaint is dismissed without prejudice.

So Ordered.

Dated: New York, New York
July 30, 1976

CHARLES L. BRIEANT

CHARLES L. BRIEANT
U. S. D. J.

RECORD FOLDER
305.297
VOL 3



U.S. DIST. COURT
SEP 0 1 1976
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,
Plaintiff,
-against-
JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,
Defendants.

DOUBLEDAY & COMPANY, INC.,
Defendant and Third-Party Plaintiff
-against-
EDICIONES DESTINO S.L.,
Third-Party Defendant.

74 Civil 5516 (CLB)

JUDGMENT
#76,808

The issues in the above entitled action having been brought on regularly for trial before the Honorable Charles L. Brieant, United States District Judge, and a jury, on April 27, 28, 29 and 30, 1976, and the Court having submitted the attached special questions to the jury, and the jury having answered the said special questions, and the jury having returned a verdict in favor of the plaintiff, and the Court having reserved on motions of defendant Jose Luis Castillo-Puche and third party defendant Ediciones Destino S.L., and the Court thereafter, having filed its memorandum opinion datad July 30, 1976, and its Supplemental Memorandum and Order dated September 1, 1976, directing the Clerk to enter judgment, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff A. E. HOTCHNER have judgment against defendant DOUBLEDAY & COMPANY, INC., in the

MICROFILM
SEP 0 1 1976

amount of $125,002., with costs to be taxed, and it is further,

ORDERED: That the complaint be and it is hereby dismissed as to defendant JOSE LUIS CASTILLO-PUCHE, without prejudice, and it is further,

ORDERED: That defendant and third party plaintiff DOUBLEDAY & COMPANY, INC. have judgment against the third party defendant EDICIONES DESTINO S.L. in the amount of $125,002., and plaintiff's costs as taxed, and its own costs to be taxed.

Dated: New York, New York
September 1, 1976

Richard J. Burghardt 9/2/76
Clerk

APPROVED:

Charles L. Brieant
U.S. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

NOTICE OF APPEAL

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

S I R S :

NOTICE IS HEREBY GIVEN that the defendant, Doubleday & Company, Inc., hereby appeals to the United States Court of Appeals for the Second Circuit from an order dated February 7, 1975 and filed on February 11, 1975 in the Office of the Clerk of the District Court denying a motion by defendant Doubleday to dismiss the invasion of privacy cause of action and from an order dated June 18, 1975 and filed on June 19, 1975 which permitted plaintiff to amend his complaint to plead exemplary damages and from the memorandum and order dated and filed on November 12, 1975 which denied defendant Doubleday's motion for summary judgment dismissing the complaint, and from the order dated April 24,

1976 and filed April 26, 1976 which denied Doubleday's motion, pursuant to Rules 103 and 104(a) and (c) of the Federal Rules of Evidence, to preclude plaintiff from offering at trial of the action any English translation of the Spanish work Hemingway Entre la Vida y la Muerta which was not before Doubleday at the time it published Hemingway in Spain, and from an order made during the trial of the action which denied Doubleday's motion for a directed verdict, and from the memorandum and order dated July 30, 1976 which denied Doubleday's motion, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure for judgment notwithstanding the verdict, or in the alternative for an order pursuant to Rule 59(c) of the Federal Rules of Civil Procedure granting a new trial on the separate grounds that the verdict was against the weight of the evidence; the award of punitive damages was against the evidence; the amount of punitive damages was excessive; that the charge with regard to the second cause of action (invasion of privacy) was incorrect as a matter of law; that the verdict with regard to the second cause of action (invasion of privacy) was against the weight of the evidence; and that prejudicial error was committed in the conduct of the trial; and finally from the judgment dated September 1, 1976 and filed September 2, 1976 against defendant Doubleday in the sum of $1 compensatory damages on both the libel and invasion of privacy causes of action and the sum of $125,000 punitive damages on each of the libel and invasion of privacy causes of action but not both; and from each and every part of the aforementioned judgment and orders, as well as such orders, opinions, determinations, rulings and findings of the District Court in furtherance of the afore-

mentioned judgment and orders and from each and every part of said orders, opinions, determinations, rulings and findings.

Dated: New York, New York
September 17, 1976.

Yours, etc.,

SATTERLEE & STEPHENS
Attorneys for DOUBLEDAY & COMPANY, INC.

By _____
Member of the Firm

Office & P. O. Address
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New York, New York 10017
(212) 826-6200

TO:

MERVIN ROSENMAN, Esq.
Attorney for Plaintiff
41 East 57th Street
New York, New York

MESSRS. STANNAGE & HAYTON
Attorneys for JOSE LUIS CASTILLO-PUCHE
350 Fifth Avenue
New York, New York 10001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

STIPULATION OF UNCONTROVERTED FACTS

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S.L.,

Third-Party Defendant.

It is hereby stipulated by and between the undersigned attorneys for plaintiff and defendant Doubleday & Company, Inc. that the following are uncontroverted facts:

1. As to plaintiff A.E. Hotchner, that:

A. he is, and has been since 1954, a resident of 14 Hillandale Road, Town of Westport, State of Connecticut.

B. he is the author of Papa Hemingway;

(i) published in 1966 by Random House Inc., which had five printings and sold about 130,000 copies, and

(ii) in 1967 by Bantam Books, which had six printings and has sold as of December 31, 1975 about 500,000 copies;

(iii) which was later published in England, France, Germany, Austria, Spain, Portugal, Brazil, Taiwan, Israel, Japan Denmark, Holland, Norway, Sweden, Canada, Australia, New Zealand and Italy;

(iv) which was a Book-of-the Month Club selection in 1966; and

(v) from all of the foregoing he received approximately $400,000.

C. he is the author of the book Doris Day: Her Story, published in 1976 by William Morrow & Co. and to be published as a paperback by Bantam Books, portions of which were published in Good Housekeeping in 1975, for which he has already received $110,000, and may receive additional amounts based on sales of that book and which has been designated an alternate selection by Doubleday's Literary Guild of America book club.

D. he is the author of two novels named "The Dangerous American" and "Treasure", both published by Random House Inc., in 1959 and 1970 respectively.

E. he is the author of two books of memoirs of his childhood named "King of the Hill" and "Looking for Miracles", both published by Harper & Row, Inc., in 1973 and 1975 respectively.

F. he is the author of a play produced on Broadway in 1964 entitled "The White House", starring Helen Hayes, and of two plays produced on road tour, one in 1961 entitled "The Short, Happy Life", starring Rod Steiger, and the other in 1967 entitled "The Hemingway Hero", starring Gary Merrill.

G. he is the author of the following original television plays:

(i) "The Vanishing Point", televised by the Theatre Guild of NBC in 1955, for which plaintiff received the sum of $2,500.

(ii) "Killers of Mussolini", televised by CBS in 1959, for which plaintiff received the sum of $10,000.

(iii) "You Sometimes Get Rich", televised by NBC in 1957, for which plaintiff received the sum of $5,000.

(iv) "Last Clear Chance", televised by CBS in 1958, for which plaintiff received the sum of $10,000.

(v) "Panic", televised by NBC in 1956, for which plaintiff received the sum of $2,500.

(vi) "The Short,Happy Life (of Men and Women)", televised by ABC in 1972 for which plaintiff received the sum of $2,500.

H. he is the author of adaptations of Hemingway novels and short stories for television, including:

(i) a ballet entitled "Capital of the World" for ballet theatre, which ballet was produced around 1953 on the "Omnibus" Program on NBC and for which plaintiff received the sum of $2,500.

(ii) "The Battler", televised by NBC in 1956, for which plaintiff received $4,500.

(iii) "The World of Nick Adams", televised by CBS in 1958, for which plaintiff received $5,000.

(iv) "Fifty Grand", televised on NBC in 1958, for which plaintiff received about $10,000.

(v) "For Whom the Bell Tolls", televised by CBS in 1958, for which plaintiff received $17,500.

(vi) separate telecasts of "The Killers", "The Snows of "Kilamanjaro", "The Fifth Column", "The Gambler, the Nun and the Radio", televised by CBS in 1959, for which plaintiff was both the producer and script-writer and for which he received an aggregate of $200,000.

I. he is the author of the script of the motion picture, based on works by Ernest Hemingway, entitled "Adventures of a Young Man", starring Paul Newman, produced by Twentieth Century Fox Corporation, for which plaintiff received $75,000.

J. he is the author of a script of a motion picture based on a work by Ernest Hemingway entitled "After the Storm" written for Coleytown Productions Inc. and to star Paul Newman, for which plaintiff has received $60,000. and will receive additional amounts after photography of the picture is commenced.

K. he was formerly Articles Editor of Cosmopolitan Magazine, and has written more than 180 articles and short stories in such national magazines as Esquire, Saturday Evening Post, Look, Life, Reader's Digest,

Cosmopolitan, True, Colliers, Ladies Home Journal, Town and Country, McCalls, This Week Magazine, etc., including three articles about Ernest Hemingway for which he received approximately $2,000.

L. he was the co-producer with Mary Hemingway of an LP record album entitled "Hemingway Speaks", issued by Caedmon Records, for which he received compensation of approximately $1,900.

M. he has given approximately 50 lectures based upon Papa Hemingway for which he received an average amount of approximately $400; these lectures were given in the years 1966-68 to conventions of teachers, librarians, student groups, civic subscription series and other groups in universities, hotels and civic auditoriums, in various cities among which plaintiff recalls are Denver, Dallas, Miami, Indianapolis, Charleston, Norfolk, Auburn (N.Y.), Waynesboro (Pa.), Hershey (Pa.), North Lake (Ill.) and Lancaster (Pa.).

N. his picture appears in Hemingway in Spain in the illustration numbered 11.

2. As to defendant Jose Luis Castillo-Puche, that:

A. at all times relevant to this suit, he was and still is a citizen of Spain, and resides in the City of Madrid.

B. he is the author of Hemingway: Entre La Vida Y La Muerta, published in the Spanish language in 1968 by Ediciones Destino, Barcelona, Spain.

C. he is the author of Hemingway in Spain.

D. he was served with a copy of the summons and complaint on May 29, 1975, that he has not appeared in this action or interposed an answer to the complaint, and that his default has been duly entered on the record herein.

E. his picture appears in Hemingway in Spain in illustrations numbered 11, 20, 24, 26, 28, 32, 33.

F. he refers to Ernest Hemingway as "Ernesto" in Hemingway in Spain.

3. As to defendant Doubleday & Company, Inc., that:

A. it is a corporation organized and existing under the laws of the State of New York with its principal place of business in the City of New York, State of New York.

B. in June 1974 it published in the United States and Canada the book entitled Hemingway in Spain (hereinafter the "Book").

C. that 7,500 copies of the Book were published ~~(blanks to be filled in by defendant Doubleday)~~:

(i) of which 300 copies were sent to various persons for publicity purposes and to newspaper, magazine and television reviewers; and

(ii) 3,488 copies had been sold as of March 1 , 1976.

D. the Book was reviewed in the issue of "Best Sellers" for August 15, 1974, published by the University of Scranton in Scranton, Pa. and that the average circulation was around 2,300.

E. the Book was reviewed in the issue of Newsweek Magazine, dated May 27, 1974, with a total circulation of 3,042,845.

F. the Book was reviewed in at least 53 other newspapers and magazines.

G. it obtained rights to publish Hemingway in Spain for an agreement to pay royalties of 7½% of retail price per copy sold, including an advance of $1,150, ~~paid~~ to Ediciones Destino S.L. and made no payment for said rights to defendant Castillo-Puche.

H. it contracted with Helen R. Lane, who is not a Doubleday employee, to translate the work from Spanish into English.

New York, N.Y.
March 10, 1976

MERVIN ROSENMAN
Attorney for Plaintiff
Office and P.O. Address
41 East 57th Street
New York, N.Y. 10022
(212) 371-3633

SATTERLEE & STEPHENS
Attorneys for Defendant Doubleday & Company, Inc.
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277 Park Avenue
New York, N.Y. 10017
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A. E. HOTCHNER,

Plaintiff,

-against-

JOSE LUIS CASTILLO-PUCHE and DOUBLEDAY & COMPANY, INC.,

Defendants.

74 Civ. 5516 (CLB)

STIPULATION

DOUBLEDAY & COMPANY, INC.,

Defendant and Third-Party Plaintiff,

-against-

EDICIONES DESTINO S. L.,

Third-Party Defendant.

It is hereby stipulated and agreed by and between the undersigned attorneys for plaintiff A. E. Hotchner and defendant Doubleday & Company, Inc. ("Doubleday") that Mrs. Helen R. Lane, if called to testify at the trial herein, would testify as follows, and that the following statements may be used at trial by either side as though they were made under oath at said trial:

1. My name is Helen R. Lane. I live in France at Antanies, Tursac, Les Eyzies-de-Tayac. I am presently unable to travel to the United States as the result of a recent illness.

2. I received the B.A. and M.A. in French at U.C.L.A. and completed course work and passed the examinations for a Ph.D. in Romance Languages and Literatures. I have been a professional translator since 1958 and have translated approximately 50 works into English from French, Spanish, Italian and Portuguese. Before being asked to translate Hemingway In Spain, the most recent Spanish translations I had done were as follows:

Alternating Currents, Ocatavio Paz (Viking Press 1973)

Conjunctions and Disjunctions, Octavio Paz (Viking Press 1974)

Nationalism, Neoimperialism, and Militarism in Peru, Anibal Quijano Obregon (Grove Press 1969)

The Great Rebel: Che Guevara in Brazil, L. Gonzalez and S. Salazar (Grove Press 1968)

Pentagonism, Juan Bosch (Grove Press 1968)

In 1974 I received the National Book Award for my translation of Alternation Currents, and in 1975 I received the Pen Club Award for my translation from Spanish of Count Julian, by Juan Goytisolo.

3. I entered into an agreement with Doubleday dated October 8, 1971 to translate Hemingway: Entre la Vida y la Muerte by Jose Luis Castillo-Puche from Spanish into English. I was to receive, and did receive, compensation at the rate of $20 per 1,000 words of translation. As is my practice, I made three copies of my translation: two I sent to Doubleday per our agreement and the third I retained. As is also my custom, I got rid of my own copy after the book was published by Doubleday. I do not have in my possession or in my control any copy of any portion of the original translation I made, nor have I seen or had in my presence, any portions of my original translation at any time since I was made aware that this lawsuit had been commenced.

4. I translated the Spanish work by Castillo-Puche into English to the best of my ability. I did, however, agree with Kate Medina, the Doubleday editor with whom I worked, that I should make changes and cuts in the translation to avoid some of the repetition and the extremely florid style in the Spanish work.

5. Prior to and during the course of my translation, the name A. E. Hotchner was never raised in any discussion or communication between Kate Medina or anyone at Doubleday and me.

6. At the request of attorneys for Doubleday, I in March 1976 have retranslated certain passages selected by plaintiff's attorney for which no copy of the original translation is available, and a copy of this retranslation is annexed hereto. [Plaintiff reserves the right to object to the admissibility of said retranslation at trial.]

Dated: New York, N.Y.
April 1, 1976

Mervin Rosenman
Attorney for Plaintiff

Satterlee & Stephens
Attorneys for Defendant
Doubleday & Company, Inc.

SO ORDERED:

U.S. District Judge

Re: Hotchner v. Doubleday & Company, Inc. Helen R. Lane Translation

Translation of passages from J.L. Castillo-Puche's work on Ernest Hemingway for which Doubleday & Company has no copy:

(Note: The abbreviation O stands for Oppenheim. The Item numbers are those cited in the document sent me.)

ITEM 3:

It was Ordonez, as I remember, who first called him "Freckles," and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it made you sick to your stomach. (Emphasis added)

ITEM 4:

"Freckles never looked you straight in the eye; he was never open and above board with you, and I always felt there was something sneaky about him. His mild manner and his air of shy diffidence were quite a clever coverup for his sly, underhanded exploitation of Ernesto." (Emphasis added)

ITEM 6:

Antonio said: "I see that 'Freckles' helps you a great deal."
Ernesto replied: "'Freckles' is the number one handyman in my cartel."
(Emphasis added)

ITEM 7:

"Hotchner's a good friend of mine, but he's clever."
I took this to be a compliment and added: "Yes, it's quite obvious that he's an awfully clever fellow."
"Yes, he's terribly intelligent, but he's also out for number one. I've never had any reason to complain, but he's the sort of person you have to keep your eye on every minute."
This was a way of introducing an accompanying friend, and although there was a tinge of scorn in his words, I disregarded it.
(Emphasis added)

ITEM 8:

The most worried and cautious member of the group was still "Freckles," with a look in his eye that was half voluptuous and half that of a helpless victim, a lynx with the air of a cocky ladies' man, who laughed, who applauded, who noted things down, who sang, but who in spite of this friendly openness, was noticeably self-absorbed at times. Although he had set himself up as almost a sort of public relations chief for Ernesto, what he most resembled was a leader of a New York or a Chicago gang. He was very good at sharing with Mary and the female guests of the party certain delicate and diplomatic errands, but at the same time he was very attentive to Ernesto's words and his comings and goings, especially where reporters or photographers were concerned. He knew how to control the situation better than anyone else. It was not at all strange that he had gotten a lot of money for Ernesto from television and the big American magazines, though in so doing Mr. Hotchner was obviously motivated by something other than a feeling of veneration for the maestro.
(Emphasis added)

Hotchner v. Doubleday & Company, Inc.



ITEM 9:

And the two or three times that Ernesto tried to explain the duel between Ordóñez and Domínguín to me, it left me rather cold. I didn't understand the whole thing. The fire that began to be kindled that "bloody" summer didn't warm me. Nonetheless, "Freckles" was happy now at what that ferment of rivalry might produce. (Emphasis added)

ITEM 10:

The others were getting dressed for dinner. The first to arrive was Hotchner, with his mocking face of a likeable rogue, as Ernesto used to say. The fact that he didn't speak Spanish constituted a sort of self-defense, and for that very reason, he could allow himself to take certain liberties. (Emphasis added)

Helen R. Lane

Helen R. Lane
Les Eyzies, France
March 23, 1976

2 pages

1 word added by hand, Item 3, initialed HL

AGREEMENT made this [illegible] day of [illegible], 19[illegible].

between DOUBLEDAY & COMPANY, INC., of Garden City, N.Y., hereinafter called "Publisher," and

Ediciones
Destino/Destino S.L.
c/o Universitas, Agencia Literaria Ibero Americano
of Gondoxer 18
Barcelona 26/ Spain
6

hereinafter called "Author," being the Author and Proprietor of a work at present entitled

HEMINGWAY: BETWEEN LIFE AND DEATH by
Jose Luis Castillo-Puche

hereinafter called "the work."

WARRANTY

21. Author represents and warrants to Publisher that:—

(a) The work is original.

(b) He is the sole author and proprietor thereof, and has full power to enter into this Agreement.

(c) The work is not in the public domain, has never before been published in whole or in part in any form and he has not entered into or become subject to any contract, agreement, or understanding with respect thereto other than this Agreement. : the English language throughout the world.

(d) If published, the work will not infringe upon any proprietary right at common law, or any statutory copyright, or any other right whatsoever.

(e) The work is innocent, and contains no matter whatsoever that is obscene, libelous, in violation of any right of privacy, or otherwise in contravention of law.

INDEMNITY

22. (a) Author shall indemnify and hold Publisher harmless from any claim, suit, or action, and any expense or damage in consequence thereof, asserted by reason of Publisher's exercise or enjoyment of any of its rights hereunder or by reason of any warranty or indemnity made by Publisher in connection with the exercise of any such rights, as provided in subparagraphs (b), (c), (d), and (e) hereof.

(b) Publisher shall have the right to defend such claim, suit, or action by counsel of its selection and with the consent of Author to settle the same on such terms as it deems advisable.

(c) In the event a final judgment is entered against Publisher, Author shall be liable for and shall pay to Publisher the amount of said judgment and shall reimburse Publisher for any and all expenses incurred in said action, including counsel fees.

(d) In the event of a settlement, Author shall be liable for and pay to Publisher (1) fifty per cent (50%) of the amounts paid by Publisher in settlement and (2) fifty per cent (50%) of the amounts paid by Publisher for counsel fees and other expenses.

(e) In the event such claim, suit, or action is discontinued or dismissed without liability to Publisher, Author shall be liable for and shall pay to Publisher fifty per cent (50%) of the amounts paid by Publisher for counsel fees and other expenses.

(f) Publisher shall have the further right to withhold and apply any royalties or other sums due Author under this or any other agreement as security for Author's obligation under this Paragraph 22.

(g) The warranties contained in Paragraph 21 and the indemnities contained in this Paragraph 22 shall survive the termination of this Agreement.

Publisher shall have the right in its discretion to extend the benefit of Author's aforesaid warranties and indemnities to any person, firm, or corporation at any time and Author shall be liable thereon as if originally made to such person, firm, or corporation.

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RLF ev'd for IV
4/23/75
202a

October 1, 1970

Mrs. Beverly Gordey
Paris Office

Dear Beverly:

RE: HEMINGWAY: BETWEEN LIFE AND DEATH by Jose-Luis Castillo-Puche

Everything worked out satisfactorily with regard to the signing of the contract for this book. You know that Sr. Verges of Destino publishers objected to having 30% of the $1000 advance we agreed on for this book withheld for U.S. tax. He came to New York and what we agreed to do was raise our advance to $1150, so that when 30% was withheld, he received as an advance, in effect, $895. Dick Gearhart approved the raising of the advance; Yanez, the agent, cabled me his approval that we pay Verges the money directly, which we did on September 24.

Sr. Verges brought Castillo-Puche into the office. In Sam's absence I met them with Brad, which was lucky because Castillo-Puche speaks and understands no English, so the conversation was carried on very nicely by Brad in Spanish (with me following everybody's eyes). Castillo-Puche is writing for a Spanish newspaper, is a demonstrative, ebullient, fiery guy who sits on the edge of his chair, gestures. He says he wants to write an extra 20 or so pages for our book (with Mary Hemingway's approval) about a love affair Hemingway had in Spain with a young (19) girl. He couldn't put it in the Spanish book, he said, because at the time the girl and Mary Hemingway objected; he says now both women have agreed he can write about it. He speaks emotionally about Hemingway as he knew him, about the way Hemingway was, and felt about, Spain. He makes the book sound fascinating.

Sr. Verges has agreed to send us the photographs he has, for use in our book. Some of the photos were supplied to him by an agency, and he will inquire whether we can use them as well, if we want, and what any cost would be. Castillo-Puche has additional photographs we can select from.

Castillo-Puche expects to be in New York for awhile, and wants to work with the translator on certain parts, primarily the dialogue, which he says is very colloquial Spanish (i.e. the quotes he attributes to Hemingway). He wants Gregory Rabassa to do the translation; he of course would be wonderful, but he is the tops and would be expensive, and probably busy. I had already written to Paul Blackburn (who translates Cortazar for Knopf), but haven't heard from him yet. If I can't get an answer at his home soon, I'll write Rabassa. Both men live in the New York area.

Love,

Kate Medina

cc: Sam Vaughan

PLF ex E1 Fold 5A

2039/23/77



needed some point or other cleared up, I would get a call from Ernesto, and sometimes one from Mr. Davis too; but when it came down to the final decision, Bill was right there at Ernesto's elbow, ruddy-faced and slow-moving and very quiet. At times Mr. Davis was that way because he'd had too much to drink and was in a sort of vague state halfway between laconic wisdom and Buddhist indifference. In short, Mr. Davis not only provided Ernesto with a pleasant, safe retreat at "La Cópula," but was also as faithful as a bird dog to him and may have even seemed like a sort of bodyguard at times. He never appeared to care much about art and literature, but it is quite possible that he deliberately fostered that impression.

#

I went on with my reading, following Ernesto about in Madrid as it was in those days, a period we Spaniards know very little about, despite all the propaganda put out by both sides. In more than one article that appeared in the press, Ernesto was described as a sort of outlaw who wandered all over Madrid during the time it was being besieged and bombarded, stirring up the people and urging them to "sack" the city. Nothing could be farther from the truth. Hemingway had come to Barcelona from Paris in 1937, at a time when he no longer felt the least desire to kill. He had come to Spain out of an inner need to play the hero, at a time in his career when his creative energies were temporarily at a low point. He went from Barcelona to Valencia and Alicante, and finally arrived in Madrid, the city he had long called "the capital of the world"; he now called it "the front-line trench of the world," and made it his headquarters. It was where he belonged.

He had not come with empty hands, for he had more than forty thousand dollars of his own money with him, and wanted to use it to equip a fleet of ambulances. It was money he had saved up over the years, and more than once he had told me how happy it had made him to be able to make such a generous gesture.

The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum.

"He's a smart cookie," Ernesto whispered to me.

"I can see that."

"He has lots of connections in television and the movies and knows his way around."

"I gather you've known each other a long time."

"Yes, we're more or less old friends."

"He's obviously very fond of you."

"He's as faithful as a bird dog. But I don't trust anybody — you know that. I did once, and the guy tried to hop in bed with me!"

The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, such as Jesulito Quintana and even Ordóñez. Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a self-important hypocrite. He put up a very good front as Ernesto's mild-mannered, obedient servant, but he would turn on you the instant you let your guard down.

It was Ordóñez, as I remember, who first called him "Freckles," and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it was sickening.

Ernesto rather liked Hotchner's funny stories and put up with his stupid drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears. Hotchner did his best to make the imaginary duel between Ordóñez and Dominguín a real one all summer long, and in moments when Ernesto was tense or had no one around for company, he was half convinced that he was witnessing a genuine "civil war" in the bullfight world, though I for my part thought the whole affair was a big laugh, and almost everyone else did too.

As an expert at grinding out publicity in the United States, Hotchner knew what a big splash Ernesto's articles were going to make, and was already bragging about what a coup they would be.

I felt very bad about The Dangerous Summer, to tell the truth, because it seemed to me that the whole farce was beneath Ernesto and that he should have refused to have anything to do with it.

"Freckles" never looked you straight in the eye; he was never open and above board with you, and I always felt there was something sneaky about him. His mild manner and his air of shy diffidence were quite a clever coverup for his sly, underhanded exploitation of Ernesto.

The blood of all these vulgar parasites in the bar was still boiling because of what Ernesto had written in The Dangerous Summer.

"When the hour of truth came..."

"The moment when you have to go in close to the horns..."

"That's right. When the hour of truth came and he saw that he was taking a worse beating than the padded horses in the bullring, he split wide open."

"Like a melon."

Ernesto had laughed at almost everything, even himself at times, but he had never laughed at Spain. He uttered the very word Spain the way a patriarch pronounces the name of his wife in the company of other women. On the road, in taverns, in the bullrings, whenever Ernesto mentioned anything Spanish, I swear there was always a special note of tenderness in his voice. And all that riffraff there in the bar — butchers, gypsies, black marketeers, traveling salesmen, bootblacks, queers, spongers, pimps, penny-a-liners, bums — raved on and on about Ernesto. I had been in this very bar with him one other time and that night there hadn't been any talk about shaved or unshaved horns, about cheap tricks or costly ones. I remembered that one of the men in the bar had

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PLF EX E4

5D

206a



remarks about Davis:

"He's really a very faithful friend. He'd lay down his life for me," he whispered.

And then a few moments later:

"He drives like the devil himself though. He scares me sometimes."

Then he dropped the subject of Davis and started in on Hotchner:

"He's a little precious, but he's a very smart cookie."

"I can see that he's very fond of you," I replied.

Then a little while later he whispered:

"I don't really trust him though."

"But I've heard you say he's very useful to you."

"Yes, that's true, but he's dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him."

Remembering what Ernesto had said about Hotchner naturally reminded me of the Irish girl who had come to play a more and more important role in that cast of kooks at the San Fermín fiesta. "Freckles" had kept whispering in Brett's ear, and Ernesto had tried to convince himself that this rather ordinary girl could fill the great empty spot in his heart. It was really a rather cruel irony. At one point he took me aside and said:

"You keep eyeing her."

remarks about David:

"He's really a very faithful friend. He'd lay down his life for me," he whispered.

And then, a few moments later:

"He drives like the devil himself, though. He scares me sometimes."

Then he dropped the subject of Davis and started in on Hotchner:

"He's a little precious, but he's a very smart cookie."

"I can see that he's very fond of you," I replied.

Then, a little while later, he whispered:

"I don't really trust him, though."

~~"But we heard you say he's very useful to you."~~

~~"Yes, that's true, but he's dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him."~~

Remembering what Ernesto had said about Hotchner naturally reminded me of the Irish girl who had come to play a more and more important role in that cast of kooks at the San Fermín fiesta. "Freckles" had kept whispering in Fred's ear, and Ernesto had tried to convince himself that this rather ordinary girl could fill the great empty spot in his heart. It was really a rather cruel irony. At one point he took me aside and said:

"You keep eyeing her."

This sentence instead of the one inside the brackets:

"Freckles " had kept whispering in Ernesto's bar, and Ernesto had tried to convince himself that this rather ordinary looking girl but certainly with quite a misterious and charming personality, could fill the great ~~amty~~ empty spot in his heart.

had introduced us to each other, he had said:

"Hotchner's a colleague of mine. He'd done some good work in televison and done a fine job of looking after my interests."

Hotchner was delighted by all the excitement in Pamplona, even though the festivities had scarcely begun. He had entirely the wrong idea about one thing though: he was quite certain that the fiesta of San Fermín would end in a great collective orgy. At one point, Ernesto turned to me and whispered in my ear:

"Hotchner's a good friend of mine, but he's a sharp costomer."

I thought Ernesto was meant that as a compliment and I said:

"Yes, it's quite obvious he's an awfully clever fellow."

"Yes, he's terribly intelligent, but he's also out for number one. He's never done me dirt, but he's the sort of person you have to keep your eye on every minute."

This was Ernesto's way of telling me that Hotchner was the sort who fawned on you if he thought it was to his advantage, and even though I thought I noted a slight note of scorn for Hotchner in Ernesto's voice, I didn't pay much attention.

Sitting opposite me were a married couple with faces wreathed in smiles, two very friendly, outgoing, charming people. The husband was wearing a white shirt with the sleeves rolled up and the wife seemed just a little bit more self-assured than her husband, as though she were quite accustomed to moving in select social circles. As we had strolled around the town, Ernesto had said to me:

JFKEXE6 617 5P

was not in the least bit interested in seeing any of the new sections of town. But LITTLE BY LITTLE HE BEGAN spending most of his time in his room in the Hotel Suecia, as though shutting himself up in a cage. Fortunately he sometimes ventured out on trips here and there, and seeing bullfights made him feel as dauntless and intrepid as in his raw youth.

I think the fact that Mary was with him on this last trip was what reassured him the most. I am convinced that with the exception of Pauline, Ernesto's second wife, Mary was the woman who had the greatest positive influence on him. It was more or less for her sake, in fact, that he had come to Spain in 1956, to give her a chance to recover her health and cheer her up a bit.

But in 1959 it was as though their roles had been reversed, for this time it was Mary who was eager to see her husband's health restored.

It was very hard to fit all the Ernestos I had seen on these VARIOUS visits together -- the HOSPITABLE and outgoing Ernesto of 1954 and 1956, the rather cold and withdrawn Ernesto of 1959, and the frankly inattentive and childishly absurd Ernesto on the eve of his departure in 1960. Mary was well aware of the difference between a spectacular but momentary fit of depression and a morbid, dangerous, obsessive self-preoccupation. Only a woman like Mary could have put up with those two ridiculous figures who hung around Ernesto every minute: Davis the jealous watchdog of his fame and fortune and Hotchner the exploiter of his reputation. Only Mary knew that Ernesto's real riches were

ALP EXE7 628

intangible, and therefore she allowed him and Davis and Hotchner to do as they pleased. It is possible that his two American friends may have sincerely thought they were looking after his interests and protecting him. There was no question but that Ernesto's worship of Ordóñez as an ineffable and unsurpassable idol had made him an easy prey to a whole swarm of buzzards from the bullfight world, and in the end they were to do him incalculable harm, not only seriously damaging his prestige as a writer but also playing havoc with his most intimate feelings...

59

(2 line #)

What had happened to Ernesto became clearer and clearer to me as I sat there in that lonely downstairs bar of the Hotel Suecia, a place that had not been the least bit lonely in the past and doubtless would be the scene of other lively doings in the future.

Despite Hotchner's warmly enthusiastic predictions that The Dangerous Summer was going to be a rousing success, I for my part had clearly foreseen that the entire affair was going to be the ruin of Ernesto -- from every possible point of view. I was very well aware that bullfighting was his fount of wisdom and the source of his most penetrating metaphors, his symbol and his reality, his (BASIC) image and the key to his style, but only when he kept a certain distance between himself and the bullfighter confronting the bull. Tauromachy could well serve as the ideal model of the writer's art, but only so long as Ernesto succeeded in

6

for Hitchens papers ②

— 141 BLF ExF

— 142 For JH

306 4/~3/75

348

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~ Write HL re: copyedits queries.

PLEASE GO FOR IV 4/23/75 7

DOUBLEDAY & COMPANY, INC.

Memorandum For Dick Carielle 212a Date 2/12/75

Dept. _____

From Kate Medina

RE: MY FRIEND ERNESTO HEMINGWAY, Jose-Luis Castillo-Puche (April 1974)

Dick, the author of this book doesn't seem to like Hochner very much; Hochner wrote a book about Hemingway, and was also with Hemingway in Spain when Castill-Puche was. I don't really think anything C-P says in the book about Hochner is libelous--it's probably just bitchy. But I thought you should look at the attached pages, which refer to Hochner, and say whether you think it's okay to publish this sort of side-swiping left in.

Thanks.

Kate

213a

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PLF EX H FOR ID 4/13/55 (R)

BELL - fairlee

500 ea. blk

Tone bourbon arrowgauge

Clk: Carlos Baker -

PLFEx I
For ID 4/23/75 214a

July 17, 1973

MEMO TO: Kate Medina

FROM: Bill Austin

RE: MY FRIEND ERNESTO HEMINGWAY

Kate - As per our conversation yesterday the statements about Hotchner in the above title should be toned down. Such statements as:

P. 141 - "two faced behavior"
"self important hypocrite"
"he would turn on you the instant you let your guard down"
"stupid stories....his obsequiousness"

P. 142 - "never looked you straight in the eye"
"something sneaky about him"
"his sly underhanded exploitation of Ernesto"

P. 308 - Hemingway 's 'quote' about Hochner

P. 348 - "he's the sort of person you have to keep your eye on every minute"
"exploiter of his reputation"

sould be toned down or eliminated.

When looked at together these statements certainly ridicule Hotchner and impugn his reputation and character. As he seems to be an author who has worked in movies and TV, this could be a serious matter.

To make matters worse I doubt whether any of these statements can be substantiated in any way.

From reading the pages you sent, this treatment borders on "malice", which together with "reckless disregard for the truth", is a prime element in any libel action.

If I can be of any further assistance, please let me know.

10

Bell — OLF Ex J For ID 4/23/75 (R)

cuts
33 — gal 126 (80-84)
100 gal - gal 94

The Spanish Earth 68 (288-293)

"Now I lay me" — gal 35 (p 116-120)

"The Waking" gal 118 "The History of the Dead" — gal 47 (164-170)

Archer label ? gal 4/1 79

Less Bell on gal 60 — 62

— gal 73 —

120+
130+

Wine of Wyoming — gal 123

Clear = exp. 124

Dangerous Summer

BEST COPY AVAILABLE

4/23/75 216a 11

August 6, 1973

Mr. Jose-Luis Castillo-Puche
Carlos Maurras, 5
Madrid (16), SPAIN

Dear Jose-Luis:

It gives me great pleasure to tell you that we have now gone into production on your book, and if everything goes according to schedule, we should publish the book in April 1974. I couldn't be more delighted that after quite a lot of work on the part of all of us, but particularly of you and Helen, the publication of your fine book is in sight. Early reactions to the book from Sales, Marketing, and Promotion people have been very good, there is a lot of enthusiasm for establishing the book vigorously in the marketplace.

There are quite a few details which I'd like to discuss and settle with you, before we are too far along in the production of the book, so I'll take them up one by one in this letter.

First, about the photographs you were good enough to send me. Attached is a copy of the list of illustrations which we would like to use, selected for the most part from the photographs you sent. (We obtained eight additional photographs from various photo agencies over here, and felt they added enough to the book so we are paying for permission to include them. These eight photographs are the ones marked with a check on the enclosed list--number 3, 19, 20, 22, 40, 41, 42.) For the rest of the photographs, if we are to keep them in the book, we must have permission, in writing, from the people to whom the photographs have been credited. I am hoping you can either secure signatures on these letters of permission for me. Or, tell me the addresses, right away, so that I might write to the proprietors of the photographs directly, in the next several weeks. It could hold up production of the book if permission on a photograph or two is outstanding when we are ready to finalize the design.

By my estimates, the four people or agencies from which we must obtain photo permission: yourself (as I understand it, and tell me if I'm wrong, a number of the photographs are yours personally),

Destino (several of the photographs seem to be marked to indicate that Destino owns the rights, not you--but I may be wrong in assuming that), Cano y Guerra, and Basabe.

I am enclosing letters of permission, to each of these people, including yourself, and if you could forward the other ones to the proper person, and ask them to get them back to me immediately, I'd be grateful. Or let me know what I should do. Thanks very much for your help, as always.

There are a couple of photographs in the Destino edition of the book which I would like have in ours if it's at all possible; but they were not among the photographs you sent to me, and we were unable to find them over here. If you would let me know whether we might obtain copies of these photographs, to whom we would have to write for permission, I would be grateful. And if you could get us copies of the photos, or tell me how to obtain them, that would be wonderful. I am enclosing with this letter a list of these photographs and look forward to hearing from you about them.

The third important matter which I'd like to take up with you concerns the possibility of libel to Hotchner in the book. You are certainly entitled to your opinion of Hotchner, and you may very well be right--it seems to our lawyers that it would be a good idea if we would tone down some of your remarks about him, on the off chance that he could possibly bring suit against you. The fact that he is an American author with quite a reputation, and also I seem to recall a professor, it's possible that he would think some of your remarks border on "malice" (in the legal sense) and that it would be professionally damaging to him, which in a legal sense could come under the legal grounds "damaging to his reputation and character". It is, in my opinion, not really awfully important in terms of what you are trying to say in this book to get at Hotchner, one way or the other, very strongly--he's just not important enough as a character in the story you are telling to risk, it seems to me, a libel suit, or even a lot of unpleasantness in the American press; your book is wonderful in enough ways, you make enough valid points about Hemingway and his relationship with Spain (which is your real thesis), so that I think that you can afford to be more discreet with Hotchner, simply for the good of your own reputation in the United States and the success of the book. If it's okay with you I will tone down your remarks on him, rather slightly. If you like I will send you the pages on which I do this, so that you can see how it reads. I certainly won't make Hotchner look wonderful--it's a question of degree and choosing a milder word for an unadmirable characteristic here and there.

About the title: the literal translation of the Spanish edition's title is [illegible]: EITHER LIFE AND DEATH. That isn't really awfully effective in English. And it seems to me not very salable.

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The idea that we want to get across is that this book about Hemingway is different from all of the many other books published in the United States about Hemingway in that it is specifically about Hemingway and his affinity for, and relationship to Spain, his special feeling for that country, and an account of some of the years he spent there. [illegible] is what I would like to get across in the title. One idea that has occurred to me is to call the book: MY FRIEND [illegible] HEMINGWAY. I quite like this, and so do my colleagues here. Does that seem okay to you?

Have any of your books been published in English? We will be asked this by newspapers and book sellers in the United States--and I'm embarrassed to say I don't really know. I know you have many books, fiction in particular, that have been pretty successful in Spain, but my impression is that the Hemingway is the first of your good works to be published in the United States. Please let me know if I'm wrong. Also, how long did you know Hemingway--what was the span of years during which you knew him? What date (year) did you meet, and then of course you knew him for the rest of his life. We will be asked this by the press, too.

Our copyeditor seems to feel there should be accents on your name--but there are none in the Spanish language edition, and I notice that you don't use accents on your letterhead stationery. So I'm assuming that we will be correct in having no accents on the name at all.

My final question has to do with the many quotes from Hemingway's works which you include in the book. Did you obtain permission to use these quotes from the Spanish publisher only? And, was the permission that was granted to you for the Spanish territory only, or did it also include world? This might be a question to be answered by Destino. It would be helpful to me to know this.

As soon as we can straighten out the credits on the photographs, so we know exactly which ones we will be able to use, I will secure payment for your

It's really marvelous that you will be represented in the Harcourt-Brace anthology of Spanish writers, and I'm delighted to hear that you have a new novel to be published by Destino. I would be delighted to see your daughters when they are in New York--I'm grateful for their help on the photo credits and would be happy to see them, and to have news about you. Nevertheless, if you could turn to the matter of the photo permissions as soon as possible, I would be very grateful.

With all best wishes,

[illegible]:jrs
Enc: Photo permissions
List of Illustrations

Kate Medina

BEST COPY AVAILABLE

CASTILLO-PUCHE

JLFEXL
Fwd E/4/3/75

Madrid, Sept. 12, 1973

Mrs. Kate Medina
DOUBLEDAY And Company, Inc.
277 Park Avenue. N.Y. 10017

219a

Dear Mrs. Kate Medina:

First of all I want to ask you to forgive me for my delay in answering your long and pleasant letters; but I have been out for a short vacaction. I have also waited for my daughters to get here so they could translate my letter into English. They have spent more than a month in New York and are very glad to have known you. Thank you for receiving them and offering yourself to anything they might have needed.

I will shortly answer all your question, since in everything I agree with you. I will number them, so I'll be sure not to miss anything.

1rst.- I have no interest in having the prologue that I sent for the English edition published. I only ask you to send it back to me, if you please.

2nd.- I think it,s a good title MY FRIEND ERNESTO HEMINGWAY, keeping of course the first name, ERNESTO,which is how we called him in Spain.

3rd.- I don,t mind that you lighten the words with which I qualify Mr. Hotchner, specially taking away anything that could be used as a libel suit gainst me. Nevertheless, I don't want him to appear as a man who was in Ernest's most sincere trust and as a possessor of alá hi secrets, like he made it look in his book. He was always a servant to He mingway, who didn't mind much about him. Ernest did not always talk highly of him, To me he said once that Mr. Hotchner was a man he wouldn't want to be left alone in a room with.

Even so, I have no interest in offendering Mr. Hotchner. Yo Could, then, as you said, send me the pages in which this toning down has taken place and I hope to be able to give my approval immediatly.

4th.- My name has an accent only in José, that is my first name, but to make it shorter I use to sign my books like this: (with no accents).

J.L. Castillo-Puche

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5º- In Spain, according to the law, there is no need for a permit to publish certain quotes from an author, when the text quoted does not reach a certain percent in comparison with the total text of the book. In Spain then we haven't had need of that permit. I don't know the U.S. law, so if the permit is needed, I would ask it to Mrs. Mary Hemingway, and I know that she is only to desirous for the book to be published. The pieces of my letters published are also very small, but if the approval of Ernest's widow is needed, just tell me and I shall write to her.

6th.- I don't have any other books translated into English, but fragments of my work do appear in various American Anthologi s that are in use in the Spanish Departments of U.S. Universities. At this moment two professors in New York are writing thesis on my work, besides other that are being written in California, Colorado, etc.

In my next letter I shall send you a curriculum vitae with all my publications and Biliography.

7º.- I met Hemingway in 1954, in his second visit to Spain after the Civil War, and we saw each other frequently in this year, in 1956, 1959 and 1960 in Spain, and in the year 1958 in La Habana. I think I tell in the prologue to my book, in the Spanish edition, the way Ernest and I met.

8º.- I have already sent my you my permission for the pictures to be published and the Basabe widow's. Mr. Vergés promised me to send you his inmediatly, and I am waiting for the one from Mr. Cano, he hasn't sent me his signed sheet, probably because of it being vacation time.

10º.- Mr. Kurt Singer book, the American edition of which I haven't been able to find, was entitled "LIFE AND DEATH OF A GIANT", and the Spanish edition is made in Mexico, in the year 1961, by Diane Edition, S.A., Tlacoquemecatl, 73. Mexico D.F. It is possible that if you get in contact with this Mexican Editorial, you'll be able find about the American edition which I haven't been able to find.

11º.- I would be very glad and very thankful to you if you would send me a copy of Mrs. Lane's manuscript, so that with my daughters help I'll be able to read it, although I am quite sure Mrs. Lane has done a great job and it's enough for me to know that you like it and think it suit the American reader.

Now, a small favor. If something is being corrected about Mr. Hotchener, then I would like to correct also something about Mrs. Valerie Hemingway, whom I always call the little Irish girl in the book. I, don't know the page al this momento, so I will tell you the page number in my next letter.

I hope it means no inconvenience. I shall write soon and include my curriculum.

Sincerely yours.

J.L. Castillo-Puche

PLF Ex M Folder 13
4/23/75
221a

October 10, 1973

Mr. Jose Luis Castillo-Puche
Carbos Maurras, 5
Madrid 16, Spain

Dear Jose Luid:

How very nice to hear from you, and also to receive the final permission letter for the photographs from Cano. When your letter arrived we were just completing work on the copyedited manuscript, so we were able to settle a number of things about the book, and to obtain for you the copies of the translation you requested.

Under separate cover we have sent you by surface mail a copy of the edited translation manuscript. As you know Helen and I did quite a lot of editing, judicious cutting, which I feel is mandatory for the book's success in the United States, and I hope and trust you will find it satisfactory. I think it reads very well in English, and I do think we have followed your instructions that we remain true to the spirit and intent of your work, if not without preserving every word.

Helen has done an absolutely phenomenal job, Jose Luis, on behalf of your book, from every point of view. She has really been tireless in answering queries, checking text permission sources for us (without which we could not have published the book in the United States, as we have to have permission to quote every line from Hemingway), correcting minor errors of fact, and so forth. As you can imagine, a book about Hemingway might be expected to receive, in the United States, considerably more careful scrutiny,, closer reading, than a book about Hemingway would receive in any other country, which accounts for our diligence about all aspects of the book.

Enclosed are the pages from the translation on which Hotchner is mentioned, so that you can see how I have toned down some of your remarks. I think that the madder gets the point about Hotchner, how you felt about him, and yet I think we are now safer from a legal point of view.

I will receive the galleys of the book November 1, after which it will be impossible to make any changes in the book. So if you have any suggestions may I please hear from you by then.

When I presented the book at our Sales Conference, our salesmen were very enthusiastic about the book and felt they would be able to sell it very well--but they did not think that the title, MY FRIEND ERNESTO HEMINGWAY, would achieve for the book the sort of sale it should have in the United States. Apparently there have been a number of books already published by friends of Hemingway, which were sold as insider's stories about a friendship with Hemingway, and these books have been of varying quality, and some of them have sold disappointingly. While your book is a wonderful portrait of Hemingway and your relationship with him, it also is unique in that it is the only book on the subject of Hemingway in Spain, his special relationship with Spain and with Spanish people; this is the theme in your book which distinguishes it from any other book anyone else could possibly publish about Hemingway. Therefore, what we would like to call the book in the United States is HEMINGWAY AND SPAIN. I hope this is alright with you, as our sales and advertising people feel very strongly that it is with this title we would be able to achieve the proper success for the book in the United States.

Because of the confusion about the sources of the Singer quotes in the book, what we have decided to do is delete the quotes, and paraphrase them, preserving the idea but eliminating the necessity for us to find the exact quote in the proper Singer book and obtain permission from his publisher to use it. I think this is really just as effective as if we quoted Singer word for word.

You mention in your letter that you wanted to make some corrections about Mrs. Valerie Hemingway. Jose Luis, it's really very late to be making any more changes in the book, so unless you feel it is very damaging to the book if these corrections are not made, I would like to discourage you from pursuing it. Helen would have to translate whatever corrections you made, then I would have to fit it into the galleys, and it's really too late to be doing that sort of correcting.

A while ago I wrote to inquire whether you were able to send me several of the photographs which were in the Spanish book, but which are not in our book. I'm not sure that we could fit them into the book, as our designer has already done her work--but if you do have some of those photos and would want to get them to me rapidly, I would see whether we could work them into the final format.

Just to confirm what I've done--the photographs for which you have given us permission, in the letter addressed to you, we have run as a

credit line: Maspons (Barcelona). Is this correct?

I hope everything is going well with you and yourwwork, and please do let us hear from you by the beginning of November on any further matters pertaining to the book. Once the galleys are back into production, I can't make any corrections or changes. Our publication is now scheduled for May, 1974.

With best wishes to you and to your daughters,

Sincerely,

Kate Medina

KBM:jme

CASTILLO-PUCHE

PLF EXN FOR IV
4/23/75 224a 14

(R)

Madrid, October 1973

Mrs. Kate Medina
DOUBLEDAY and Co. Inc.
277 Park Avenue. New York.

My dear Mrs. Kate:

I am really grateful to you and to Helen for your hard work, for having finally succeeded in a translation of my book suitable to the American reader. I know it has taken a great deal of care and dedication on your part, for I understand that a book on Hemingway will be very closely read in the United States. I am a passionate writer and I try to be sincere - I think Ernest also did - and I tend to say things in a harsh way, like in all my novels, because I believe that literature oughtto be a sort of scalpel on society's body and flesh, or else it does not mean a great deal.

I am very happy to know that my book is on its way and that the galleys will be ready november 1. I really aggre with any decision you have taken respect the book, for I know that any cut or change is in order to give it the highest success it can get, and so, you have my permission for everything:

1rst.- The title HEMINGWAY AND SPAIN is to my liking and I think it best fits the content of the book.

2nd.- I find perfect all the toning down on Mr. Hotchner.

3rd.- I also find appropriate the proceedings with Mr. Kurt Singer's quotes. I find that in that way none of the quotes value will be lost, and it,s good since in my belief they are fundamental in order to underline my own observations of Hemingway as I found him in the last few years of his life.

4th.- I also find of use the elimination of the pictures of the Spanish edition, since I haven't been able to get them back from DESTINO. I am sure the book is beatiful concerning its pictures.

5th.- The credit line MASPONS (Barcelona) of the pictures of which I have given you permission is correct.

And last, I want to ask you a small favor and I would be extremely grateful were I to see it accomplished. It concerns Miss Valerie and it,s that I would like a sentence on one of the pages you sent me a copy of (page 308) to be changed to another one, as you can see in the page I send you back. There would not be any need to contact Mrs. Lane if the translation one of my daughters has made of the sentence is in correct English, as I hope it is, but in any case you will be the one to judge and to decide about the matter. I am sending this letter by express way so that it shall reach you before November 1 and the change be able to be made.

I am also going to write to Mrs. Lane to congratulate her and her most wonderful job, as I believe. When the book is

presented to the public I wish very much to be in New York, so I hope you will tell me when I should go there.

My daughters send their best regards and until we meet I hope as soon as it can be, I am

Sincerely yours

Joachim Costa Lima

HELEN R. LANE PINE ROAD TUXEDO PARK, N.Y. 10987 TEL.: (914) 351-2227

JLF Ext. Fund II
2.2.64/23/75 16

November 2, 1971

Mrs. Kate Medina
Doubleday & Company
277 Park Avenue
New York, N. Y. 10017

Dear Kate,

Enclosed about thirty more pages of the Hemingway. You are quite right -- it is getting less arduous as I go on, and this section does not seem quite so loaded with impossible metaphors as the first twenty pages I sent along. I have a rough draft of thirty-five additional pages done, but will not type them until I have your reaction to my pages 23-50.

We seem to be in perfect agreement on what needs to be done, and I gratefully accept all your improvements. Like you, I am quite certain even further cutting may be necessary when we have the entire manuscript in hand.

I have been reading Carlos Baker's monumental definitive biography of Hemingway, and discover a number of misspellings and little errors of detail in Castillo-Puche. (On page 41 of C-P, for instance, the name under which EH registers at the Mayo Clinic is given as "George Soewyr," while Baker gives "George Saviers.") I must say I trust Mr. BAker's scholarship more than Señor Castillo-Puche's -- may I correct accordingly when I find such discrepancies?

The problem of quotations from Hemingway's works has turned out to be less formidable than I thought. I have been able to identify a number of them from the short stories where C-P has mentioned the title, and from now on when I give a quotation in English it is Hemingway's actual text. In other cases, I have not been able to supply the original passage in English, either because C-P has not indicated the source, or because it is from a long novel or from Death in the Afternoon, and is thus is not readily locatable without some hint as to chapter number. I would estimate that I will be able to track down about half the quotations without help from C-P, and think it not unreasonable that he be asked to supply the English text of the rest or at least specifically indicate the source by title of work and chapter so that I can find them. It seems to me that it is imperative to find the Hemingway original rather than attempting to translate from C-P's Spanish back into English if this book is to have any critical cachet, but I will, of course, abide by your decision in the matter.

I'm delighted that we are evolving a work method, and thank you so much for your kind words. I confess I'm finding it unexpectedly intriguing to be a "collaborator" rather than just a plain old translator!

All best wishes,

Helen

P. O. BOX 8, LAKE PINE ROAD TUXEDO PARK, N.Y. 10987 TEL.: (914) 351-2227

SLF-Ex Q For I.D. 4/23/25 17

227a

April 25, 1972

R - pls. acknowledge ms for me & say I'll try to get back to her by May 12. Ask would she be sure to send to her summer address at some point.

Mrs. Kate Medina
Doubleday and Company
277 Park Avenue
New York, N. Y. 10017

Dear Kate:

Enclosed a rather substantial "swath" of 150 further pages of the Hemingway. There were many problems in this section, as I'm sure you'll see when you read it -- in particular the long passages on the putative state of Ernesto's immortal soul, which were especially hard to render into anything like acceptable English. Moreover, I discovered that a large number of Castillo-Puche's comments about episodes in Hemingway's novels contained gross errors of fact -- citations attributed to entirely the wrong book, and in one very troublesome case a total confusion of two characters in For Whom the Bell Tolls (Agustin and Andrés), so that C-P's remarks, especially page 257, simply do not apply at all. Groan! I am afraid C-P will have to be asked to rewrite to make his elucubrations on the bullfight metaphor in For Whom fit the novel here. Groan!

I wonder: after you've read this section, might we meet to discuss whether more or less extensive cuts cannot be made in the rest of the book? I have read over the remaining pages carefully, and there are literally yards of agonizing, repetitive, lugubrious sentences dealing with death and God's judgement of his servant Ernesto that I am almost certain you will decide to eliminate eventually. I freely confess that the possibility of cutting them before I translate them is partly an "interested" suggestion on my part, since these are the passages that are taking such an inordinate amount of time to get into any sort of readable English; on the other hand, it also does seem like perhaps an unnecessary waste of Doubleday's money to pay for great swatches of material that you will eventually blue-pencil. Could you spare a few moments mayhap to consort with me? If possible before May 12th, when we leave for the summer (with two typewriters, a pussycat, and this time the collected works of Ernesto) for our funny-but-beloved old stone farmhouse in the Dordogne? Since we are not far from the Spanish border, it might also be possible for me to meet Señor Castillo-Puche in Spain to unravel minor problems if you approve of such a step.

This whole project is going more slowly than any I can ever remember having done, but I am sending my draft out to a professional typist now rather than doing it myself to save time, and I am thus quite certain I can meet the contract deadline if I have the requisite identification of quotes from Señor Castillo-Puche in time. Can you assure me that there will not be a legal problem for me should he prove tardy? -- I'm a bit frightened about how much time it is going to take me to track down exact passages even if he gives a fairly precise indication of where they are to be found. I'm sure I'm worrying needlessly since you've been luminously sympathetic about all the problems involved in this very unroutine translation, but I pride myself on having done over thirty books and never failed to meet an agreed deadline.

(over)

The Italian book for review arrived today, and I shall report forthwith. Many thanks to you for the chance to read for Doubleday -- I've always found that trading off a bit between editorial reading and translating keeps the mental juices for both circulating properly.

All best to you as always, and thank you so much for your warm words about my book for Viking next year. After Ernesto, I think it may even seem easy!

Cordially,

Helen

PLP EXV FOR ID 4/23/15

(X)

# DOUBLEDAY

A COMMUNICATIONS CORPORATION

A.29a

22

1897 1972

March 12, 1973

Mr. A.E. Hotchner
14 Hillandale
Westport, Connecticut

Dear Mr. Hotchner:

I am editing a book about Ernest Hemingway, and his time in Spain, written by a Spaniard named Jose Luis Castillo-Puche. Throughout the book Mr. Castillo-Puche quotes from Hemingway's texts, and we of course want to include the quotes in the original English, certainly not translate Hemingway from the Spanish! I am very anxious to get hold of a copy of THE DANGEROUS SUMMER, which I understand never appeared in book form, but which was published as a series in Life shortly before Hemingway's death. Since you wrote such a wonderful book about Hemingway, it occurs to me that you might be able to help me, and give me some advice on where I might get my hands on a copy of THE DANGEROUS SUMMER text. I would be grateful for any assistance you could give me, and so would Mr. Castillo-Puche.

All the best,

Kate Medina

Kate Medina

KBM:rbc

THE DANGEROUS SUMMER appeared in three installments in Life beginning with the Sept. 5, 1960 issue. I'm sure these copies are easily obtainable from a back copy magazine shop. I have given my copy of the text to a university. As for the full text of the book, of which the Life material was but a part, you would have to get in touch with Mrs. Hemingway, since the full text has never been printed. She's at 37 E. 65th. If I can be of further help, let me know.

A.E. Hotchner

Pl's Exhibit 30

Plaintiff Exhibit of translation by Purczinski and comparison with Lane and "Hemingway in Spain"

230a

Item 1

| Purczinski Translation | Lane Translation | The Book |
|---|---|---|
| p. 113 (of Spanish Version) | p. 141 | p. 82 |
| "The last time, the party was soured somewhat for us, with that rather ambiguous type, freckle-faced and much given to sophistry, that one could describe as that typical character in American literature who could just as easily be a preacher of virtue or a promoter of street juvenile delinquencies. (emphasis added) | "The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might perhaps best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum". (emphasis added) | "The last time Ernesto and I were together, Aaron Hotchner had been there, and I had found him rather a wet blanket. He was something of an enigma, a sophisticated, freckle-faced man who might best be described as that typical character in American literature, the person who could easily become either a Bible-thumper or a bum". (emphasis added) |

Item 2

| Purczinski Translation | Lane Translation | The Book |
|---|---|---|
| p. 114 | p. 141. | p. 82 |
| "I think it was Ordonez who nicknamed him 'Freckles' and that name 'Freckles' stayed with him, and he took it with good humor and even a certain amount of cleverness, although at times his role of shit-licker of the old colossus was so ostentatious that it almost made you want to vomit. (emphasis added) | "It was Ordonez, as I remember who first called him 'Freckles,' and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it almost made you sick to your stomach." | "It was Ordonez, as I remember, who first called him 'Freckles', and the nickname stuck. He pretended not to mind and was good-natured about everything, but he was such a toady at times that it was sickening" (emphasis added) |

231a

Item 3

| Purczinski Translation | Lane Translation | The Book |
|---|---|---|
| p. 114 | p. 142 | p. 83 |
| "'Freckles' did not look you in the eyes, he did not speak frankly, and he never gave the impression of coming clean. This play-acting was obviously hiding something. He covered up, sometimes smoothly, and other times with unsociable withdrawal, his lack of interest in everything that was not the half-pimpish, half-exploitive pursuit of the master. (emphasis added). | "'Freckles' never looked you straight in the eye; he was never open and above board with you, and I always felt there was something sneaky about him. His mild manner and his air of shy diffidence were quite a clever coverup for his sly, underhanded exploitation of Ernesto." (emphasis added) | "'Freckles' was never open and aboveboard. His mild manner and his air of shy diffidence seemed to me quite a clever cover-up for his exploitation of Ernesto. (emphasis added) |

Item 4

| | | |
|---|---|---|
| p. 209 | p. 308 | p. 161 |
| "Then he would leave Mr. Davis and refer to Mr. Hotchner, and say: 'He is very 'precious' but very capable and intelligent.' 'It is ~~very~~ evident that he likes you very much', I would say to him. After a moment, he would add: 'But I have still not reached the trusting stage.' 'You yourself said he is very useful to you.' 'Yes, but he is an ass-licker and dirty/ somewhat treacherous. I wouldn't sleep with him in the same room'." (emphasis added) | "Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie'. 'I can see that he's very fond of you,' I replied. Then a little while later 'I don't really trust him though.' 'But I've heard you say he's very useful to you.' 'Yes, that's true, but he's dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him'." (emphasis added) | "Then he dropped the subject to Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.' 'I can see that he's very fond of you,' I replied. Then, a little while later, he'd whispered, 'I don't really trust him, though'." (emphasis added) |

Item 5

232a

**Turczinski Translation**

p. 230-1

Ernesto whispered in my ear:
"He is a good friend, but ~~rather~~ a kid who raised himself in the streets."
I took this as a compliment and I added:
"One can see that he is in the know."
"Yes, he is very intelligent, but a street-type. I have never had to complain about him, but he is one of the ones you have to be a bit wary of."
This was a way to introduce a friend who is willing to serve one's interests and, although in his words there was a ~~faint~~ tinge of contempt, I did not take it into consideration. (emphasis added)

**Lane Translation**

p. 348

At one point, Ernesto turned to me and whispered in my ear:
"Hotchner's a good friend of mine, but he's something of a rascal."
I thought Ernesto was just kidding and meant (crossed-out)"
"Yes, it' quite obvious he's an awfully clever fellow."
'Yes, he's terrible intelligent, but he's also out for number one. He's never done me dirt, but he's the sort of person you have to keep your eye on every minute.
(emphasis added)

**The Book**

p. 182-3

"At one point, Ernesto turned to me and whispered in my ear: "Hotchner's a good friend of mine, but he's a sharp customer."
I thought Ernesto meant that as a compliment and I said, "Yes, it's quite obvious he's an awfully clever fellow."
"Yes, he's terribly intelligent, but he's al out for number one," (emphasis added)

Item 6

| Purczinski Translation | Lane Translation | The Book |
| --- | --- | --- |
| p. 244-5 | (none) | p. 196 |
| "The most worried and cautious member of the group was still 'Freckles', with his ~~stare~~ gaze which was a cross between voluptuous and cornered animal, ~~of~~ a lynx with a "quinqui" (slang), who laughed, applauded, made a note of things, who sang, but who in spite of this camaraderie, at various times could be seen to be completely in his own world. Although he had elevated himself almost to the status of a kind of public relations chief of Ernesto's, what he looked most like was the leader of one of the New York or Chicago gangs. He knew very well how to share with Mary and other women guests the delicate and diplomatic missions, but without neglecting to be very attentive to Ernesto's words and comings and goings, particularly when reporters or photographers were concerned. He knew better than anyone else how to control the situation. It was not strange that he had caused Ernesto to earn a great deal of money from television and the big American magazines, although in those endeavors Mr. Hotchner was evidently motivated by something more than sentiments of veneration for the master. (emphasis added) | | "The most standoffish and wary of the group was 'Freckles' Hotchner, lolling in his chair looking like a crafty gypsy and watching all of us with that strange expression of his, half lustful and half on the defensive. He was laughing and applauding and singing and taking it all in, but despite his apparent air of easy camaraderie, it was quite noticeable that he was subtly playing the role of ring-master. He was very careful to be properly attentive to Mary and extremely polite to her and the other guests, but he kept his eye on Ernesto every minute, watching his every move and listening to his every word, especially when he was approached by journalists or photographers. 'Freckles' was in complete control of the situation, and I wasn't at all surprised that he had earned lots of money for Ernesto by signing him up with the television networds and mass-circulation American magazines, though I was quite certain Hotchner had been motivated by something other than worshipful admiration for a great writer. (emphasis added) |

233a

Item 7

| Purczinski Translation | Lane Translation | The Book |
|---|---|---|
| p. 253<br>"And the two or three times that Ernesto tried to explain to me the duel between Dominguin and Ordonez, it left me ~~rather~~ cold, rather than anything else. I did not understand what it was all about. The fire which was beginning to be stirred that "bloody" summer, did not warm me. Nevertheless, Freckles was happy now with whatever that ferment of rivalry could produce,<br>(emphasis supplied) | (none) | p. 203<br>And the two or three times that Ernesto tried to explain to me why the duel between Dominguin and Ordonez was so important, the whole thing left me rather cold. I didn't really understand what all the fuss was about. They had managed to kindle some sort of fire that "dangerous summer", but I never felt warmed by it. But 'Freckles' was delighted at the thought of how much money they were going to make, what with all the talk of a great rivalry between the two matadors. (emphasis supplied) |

224a

Item 8

| | | |
|---|---|---|
| p. 438<br>"The others were dressing for dinner. The first to arrive was Hotchner, with his mocking face of the congenial gutter-rat, as ~~Mike~~ Ernesto said. The fact that he did not speak Spanish constituted a certain self-defense and for that reason ~~alone~~, he was given more leeway. Then Mary arrived with the girls and they ~~were~~ looked all beautiful and like new."<br>(emphasis supplied) | (none) | p. 360<br>"We went upstairs to dress for dinner. The first to come down was Hotchner. Then Mary arrived with the other girls, all of them looking very pretty and as fresh as daisies. |

31

31

Plaintiff's Exhibit 10 For Trial

Set forth below are true and accurate extracts from correspondence from Ernest Hemingway ("Hemingway") and Mary Hemingway to plaintiff herein:

Letter, dated July 4, 1950, from Mary Hem[illegible]ay. "Honey Hotch" *** "I am a true admirer o[illegible] you and what is more I love you and your fine sec head and heart".

Letter, dated July 21, 1952, from Hemingway: "Dear Hotch-maru: You are so god-damned loyal and thoughtful and I am so sloppy and bad about writing *** I wish we could see you. I miss you very much *** If there is ever anything I can do ever, let me know. Your friend".

Letter, dated August 4, 1952, from Hemingway. "Christ, I wish we were going racing again. The old Hemingstein to Hotchner to Chance was the best double play combination I ever had anything to do with ***"

Letter, dated November 7, 1956, from Mary Hemingway. "Dearest Hotch Puss *** We miss you all the time".

Letter, dated December 28, 1956, from Mary Hemingway. "Dearest Hotch Puss" *** "Is there any chance of seeing you again. We can hope. Love from both".

Letter, dated August 20, 1957, from Hemingway: "Hotch, you always write such good letters and I was so glad to hear about Venice the two different times, and the other trips and the good jokes. Mary always loves your letters too and they cheer her up. She says she would rather have you around with us than anybody. Me too. Love from Mary and me".

Letter, dated June 18, 1959, from Hemingway. "If you could get to Madrid by the 26th it would be wonderful".

Letter, dated June 19, 1959, from Hemingway. "Wonderful to be seeing you so soon."

Postcard, dated September 6, 1959, from Hemingway. "We miss you at everything always".

Letter, dated September 16, 1959, from Hemingway. "We had a great trip all around though its always lonesome without you".

Letter, dated May 4, 1961, from Mary Hemingway. "Hotch Dear". *** "sweetie, and love to you all".

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TELEPHONE (202) 298-6350

July 24, 1975

Mervin Rosenman, Esq.
41 East 57th Street
New York, New York 10022

Re: Hotchner v. Doubleday

Dear Mervin:

This is in response to your letters to Bob Callagy of May 2, 1975 and June 19, 1975.

On July 17, 1973, William Austin was Assistant Contracts Manager of Doubleday & Company, Inc. He did not begin law school until the fall of 1974, at which point he was no longer employed by Doubleday. Second, Mrs. Medina has informed me that, in response to your questions about translation and galley proofs, she made inquiries and conducted a search at Doubleday and could not find these proofs or any evidence that they might still exist anywhere at Doubleday. She also said that it is not normal practice at Doubleday to keep such proofs and it would be highly unusual for anyone at Doubleday to have retained the translation or galley proofs of Hemingway in Spain.

If you have any further questions concerning either of these matters, please let me know.

Very truly yours,

Robert P. Marshall Jr.

RPM:sk

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*The*

# LIVING WEBSTER

## Encyclopedic

# DICTIONARY

## of the English Language

With a Historical Sketch of the English Language by
Mario Pei, Professor Emeritus of Romance Philology, Columbia University

THE ENGLISH-LANGUAGE INSTITUTE OF AMERICA
Chicago

**driv·el**, driv'el, *v.i.*—*driveled*, *driveling*, *Brit.* *drivelled*, *drivelling*. [O.E. *dreflian*.] To let saliva flow from the mouth; slaver; to talk childishly or idiotically; utter silly nonsense.—*v.t.* To utter childishly or idiotically; to waste childishly.—*n.* Saliva flowing from the mouth; slaver; childish or idiotic nonsense; silly talk; twaddle.—**driv·el·er**, *Brit.* **driv·el·ler**, *n.*

**hood·lum**, hōd'lum, hud'lum, *n.* A thug or gangster; a young rowdy; a destructive person.

**hyp·o·crite**, hip'o·krit, *n.* [Fr. *hypocrite*, Gr. *hypokritēs*.] One who practices hypocrisy.—*a.*—**hyp·o·crit·i·cal**, hip"o·krit'i·kal, *a.*—**hyp·o·crit·i·cal·ly**, *adv.*

**ob·se·qui·ous**, ob·sē'kwē·us, *a.* [L. *obsequiosus*, obsequious, < *obsequium*, compliance, < *obsequor*, to follow.] Excessively obedient or submissive to the will of another; compliant; servile.—**ob·se·qui·ous·ly**, *adv.*—**ob·se·qui·ous·ness**, *n.*

**ras·cal**, ras'kal, *n.* [O.Fr. *rascaille* (Fr. *racaille*), rabble; origin uncertain.] A base or dishonest person; a playful designation for a knavish, roguish person or mischievous animal. *Archaic*, the rabble; a person belonging to the rabble.—*a.* Rascally; knavish; dishonest. *Archaic*, belonging to or being the rabble.

**riff-raff**, rif'raf", *n.* [M.E. *rif(and)raf*, < O.Fr. *rif (et) raf*, every bit.] Worthless or low persons; the disreputable element of society; the rabble. Also *raff*.—*a.* Belonging to the rabble; worthless or trashy.

**toad·y**, tō'dē, *n.* pl. **toad·ies**. [Short for *toadeater*.] A sycophant; a flatterer; a toadeater.—*v.t.*—*toadied*, *toadying*, fawn upon in a servile manner; to play toady or sycophant to.—*v.i.* To act as toady.—**toad·y·ism**, *n.*

**treach·er·ous**, trech'ėr·us, *a.* [O.Fr. *trichëor* (Fr. *tricheur*), a trickster, < O.Fr. *tricher*, *trecher*, to cheat, to trick; of Germanic origin, and akin to *trick*.] Characterized by treason or violation of allegiance or faith pledged; faithless; deceptive; uncertain or unreliable; as, *treacherous* waters; precarious; risky.—**treach·er·ous·ly**, *adv.* **treach·er·ous·ness**, *n.*

**two-faced**, to'fast", *a.* Having two faces. *Fig.* deceitful; hypocritical.—**two-faced·ly**, tō'fā'sid·lē, to'fāst'lē, *adv.*—**two-faced·ness**, *n.*

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ALICANTE

Sept. 6 /59

HOTCHICANTE - The town is as cheerful
and noisy as ever, and the gin local. Thank you
for such a dear letter - if you're still East Oct.
6 - hope to see you. Bulls tomorrow. Mary
My darling Baron Hotch, one can hardly exist without you, Antonio has
so many corridas in September he is needing your help all the time. Please
keep fingers crossed and remember we miss you all the time. Love, Annie
This is the town where you first went into the callegon. Bulls
tomorrow at Villena up the road from here. Then Murcia 2 - Ronda
then back to Salamanca - we miss you at everything always - Love
Herminestein (Von and Zu)
Long live Torero Baron Hotchner - Viva el
Pecas! Miss you miserably - Valerie.
Sept.
Palencia, 3+4, Merida, 5, Cuenca, 7, Villena 8+9 Murcia
10 Ronda 11 Allicante 12-14 Salamanca 15 Jerez 19 Aranjuez
20 Valludolid 22, Logronoetc. Antonio's France dates in between.
Love Bill.

A.E. Hotchner
R.F.D. #5
Westport, Conn.
Estados Unidos de
America

239a

240a

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FINCA VIGIA, SAN FRANCISCO DE PAULA, CUBA

August 26th, 1958

Hotch darling - For four months now I've sat here on my hot (well, it's hot here) well-rounded ass wanting to write you a letter and thank you for your darling letter from London-in-bloom and wish you fun in the Oriente and success with the pelicula, and din't and din and squirmed and wiggled. Because what I wanted to do was write you a lot of nice, big, decorative compliments about the book, which I read the moment it arrived, about the time of your letter in May; b I've had no success at all trying to write the compliments. Papa a I both hope the book will sell BIG to Hollywood and TV, and those afternoon radio shows too, natch - hope is not the word, or rather, is not the word. We're sure it has and hope you can manage with th 75% income tax for this year; and maybe we can just shelve the book people do it all the time - you forgiving me, please, and then we c get back to our old happy baseball, boxing and the commercial arts, tenuous but strong like a spider's web way of communication. I've really lost my syntax, if not my marbles - well, who knows - as you see. But it has been really unbearable, waking up and thinking "no Hotch today" either to, or from. I miss you, sweetheart, and I'm sure Papa does too(you've doubtless been too busy to notice).

Since June we have had it hot here, sweat all-day, all hot, which reduces me, tho not Papa, to a mindless, useless jelly. July the thermometer in the shade in my room has not moved between and 84. But, having done a book-sized thing through the fall and winter, Papa started a new thing in the spring and has gone on with continuously in single-minded devotion, ignoring the heat, the lack fish in the ocean (Gulf Stream sluggish or disappeared or running backwards as it was yesterday when we went out, and no fish on the surface because the surface water is too warm) threatening cables a telephones from Ruperto, all the inducements of Spain or anywhere e Despite the heat he's in good shape, pressure-wize and otherwize, ½ to 3/4 mile every day (me, a full mile), although the pool has bec like chicken broth the last week) and fine spirits - with time out massive irritation over Alfred's boobiest blunder yet. This is our diverting life and we plan to break it off next month and go somewh to cool off and look at new scenery. I got one thing accomplished summer, almost - by a lot of manoeuvering I've got a new and beauti road almost saved, as of now, from billboards. Worth the trouble.

Hotch sweetie, do let us have a run-down on you and you and your red-heads, when you have a minute - Buckets of love,

BEST COPY AVAILABLE

FINCA VIGIA, SAN FRANCISCO DE PAULA, CUBA

50

Sunday, Nov. 8th

Hotchkisible -

In case you'd be wondering about our plans for the new flat, the current idea is we'll just let it sit, getting itself painted and the new stove installed, until Jan., when Papa plans to return here from SunValley to finish his bull piece and I will go there to get the flat started.

The mob arrived here in fine shape, a delegation of our village 26th of July movement waiting at the airport to welcome Papa and thank him for the quote he made when he arrived in N. Y., and the welcome-home party with the house full of people going on until all hours, good old Spanish style. I finally got everything working here, just in time for them and we've been in full swing. Went fishing one day - one lousey Cuda and nothing else - but Antonio and Nacho happy on the boat, weather good, and Carmen not seasick as she'd feared. They went night-clubbing last night, so we have free time this morning. It was Papa's saint's day yesterday, which I didn't learn until just a bit before lunch; but I wirled around, made a 12-foot long tribute to him, which pleased us all.

We are waiting for Antonio's driving license to arrive, then the three of them take off for Ketchum via Key West, Nacho returns to Madrid and our black Lola and I fly to Chicago, then take the train out to get floors washed and beds made before they arrive. There isn't a pot, pan, plate or cup in the joint at this point, but Papa, in company with lots of other boys, thinks this a defect which can be cleared up in 5 or 10 minutes. I had large doubts about going out there this year, but the need to get the place in some sort of operational order decided me. With Carmen speaking no English, it would be too big a complication for Papa to handle, even with the help of all his local female admirers.

I don't know what he thinks, but my feeling is that I can't yet assess the damage done to our partnership last summer in Spain - mostly by Bill Davis - so I don't yet know whether or not it is reparable. But hope so.

Carmen, it's nice to see, is particularly happy here - Antonio giving her compliments and kisses - makes me happy too.

Papa says he's written you a business letter, which you should have before this. He hopes to get to Ketchum by Nov. 15th or 16th.

Luck and love, you darling -

Mary -

2.42a

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CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

# WESTERN UNION
## TELEGRAM

1201 (4-60)

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

ARD035 MC108

1961 JAN 10 PM 12 34

M ROA039 PD ROCHESTER MINN 10 1051A CST

A E HOTCHNER

ONE EAST 62 ST NYK

HOPE OLD EYES OK NWA ON STRIKE. CAPITOL BEST DIRECT MINNEAPOLIS THEN BRANIFF OR OZARK HERE OR JEFFERSON TRANSPORTATION LIMOUSINE NINETY MINUTES HERE EVERY FOUR HOURS EIGHT BUCKS. WEIGHED ONE SEVENTY THREE AND A QUARTER TODAY. ALL OF IT GLAD TO SEE YOU LOVE

PAPA MARY.

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

57

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P. O. Box 555 - Ketchum, Idaho

Thursday, May 4th,

Hotch dear -

I have a letter from Papa, long, the handwriting pretty good, much more lucid than he's been for some time - still harping on our lack of finances - and presenting me with a new worry which, do forgive me, I have to share with you. He writes he has to buy clothes (I sent plenty in his Val-pack) then "Also I should start working and want to be out of here the soonest I can."

I wrote him back saying all the local news, also "Please don't con your friends there into letting you come home until they are absolutely sure your cure is complete " etc., we don't want repetition of last three months etc.

But I worry 1. That he'll do just that.
2. Whether or not they'll know when his cure is complete.
3. If I write such stuff to Papa again, he'll turn the persecution convictions against me.

Sweetie, do you think you could talk to Dr. Cattell about this. I hate robbing you of the time, also worrying you. But, being totally ignorant of the whole subject, I still feel that Papa may need a thorough-going job of psychoanalysis, and I am not at all sure that Dr. Rome is the man to do it. He was able last winter to disabuse Papa of his immediate hallucinations; but I never heard him, being there almost every minute, go with any depth into the causes of them, or help Papa to probe around the corners where he took the wrong directions, maybe long ago. Perhaps it was really not necessary.

Another thing in his letter sounds strange to me - he writes, "Dr. Butt (internist) has brought me good reading and Dr. Rome is very pleasant."

I don't know, Hotch, but I wonder if could ask Dr. Cattell's advice. For me to do it on the phone, he not knowing me, seems an awkward way of getting at this problem. Of course we couldn't arrange such a program unless Papa would consent to it; but maybe it is not too early to think about a transfer to Meninger's. One thing I'm pretty sure of is that a repetition of the past 3 months here would destroy me in one way or another. You know I don't mean that as a threat; it's just a fact.

No word from Rochester since Dr. Butt called a week ago - if I don't hear, I'll call Rome soon.

Snowing here today, lovely with the white flakes against the green sage.

53

P. O. Box 555 - Ketchum, Idaho

9-2-65

Hotchcoce - sweetcoee

Here's your Losey letter back before it gets buried.

I got a note from Losey in Sicily asking what sort of terms I'd want for ATR and I answered him to London explaining that I don't know anything about terms and so was sending the letter to Alfred with my recommendation that we make the book easily available. Then I wrote Alfred, with the Losey letter, and really stirred it in, saying I'd like to let him have it for peanuts but would like a small percentage of the B. O. receipts and, if possible, to retain the rights to a TV production. Haven't heard a whisper about it from Alfred, but he's coming out here Sept. 14, and I've got a note to go into this with him, among other things. I wrote to Mr. Losey that I felt sure we could reach an arrangement which would be satisfactory and convenient for us both - and I intend to do so, if he continues interested.

How very trenchant his evaluation of the book is -"subjective, bitter, vindictive, self-indulgent." Hard to understand why Adriana allowed them to make such a splash about her being Renata in Epoca - I've had a dozen letters from her about it, all disclaiming her responsibility and blaming Epoca. She wanted 72 hours q E's letters to her after I wrote her that the letters could be yanked.

Dove season opened yesterday - day's limit, 12 -. Most year's you walk a couple of fields, put them up with your approach and get your bag in an hour. Last year I simply stood under a tree, took shots at birds passing, and got my limit in less than an hour. Yesterday we walked a dozen fields - about 7-8 miles, we figured - hunted from 8:30 til 3:30 before we got our limits. The wisdom-purveyors say they are this wild because we had a lot of bad weather - storms and cold - in August and it sent our local doves south. Chukkar season next. Come on out and run up mountains with me — Luv to all — mary.

# European Literary Scene

*Robert J. Clements*

**An exciting discovery** in France concerns Nostradamus, the Renaissance astrologer whose oracular *Centuries* has influenced rulers down to Adolf Hitler. Born in the Provençal town of St. Rémy in 1503, Nostradamus became one of the world's greatest delvers into the occult, and was adviser to both Queen Catherine de Médicis and her son Charles IX. Although he was familiar with ancient sciences, including the cabala, Nostradamus curiously omitted reference to the *Hieroglyphics* of the fifth-century Greco-Egyptian natural scientist Horapollon, a work that was extremely popular in his day and abundantly available in various translations. Now M. Pierre Rollet, a publisher from Aix, has discovered in the recesses of the Bibliothèque Nationale a manuscript that would have had to be invented if it did not exist. Nostradamus's *Interpretations* of the aforementioned *Hieroglyphics*. The discoverer describes it as "a treatise of sympathetic and symbolic magic, establishing the occult connections existing between certain objects and their real meanings." Rollet has already issued the book at Rue Marius-Reinaud, Aix-en-Provence.

The newest volume of Tchou's expensively produced "Livre d' Identité" collection, devoted to Paul Eluard, has just arrived. The "photograph album" contains over 600 documents concerning Eluard's life and poetic career. It is profusely illustrated with letters, invitations, autograph poems, posters, and of course photographs: of the poet with Picasso, Dali, Neruda, Aragon, Pierre Emmanuel, and a host of others. Whether or not one picture is worth a thousand words, one puts down this 250-page book with a feeling of knowing the late Eluard (d. 1952) more intimately than was ever possible before. The de Gaulle government, which fined Tchou 20,000 francs in 1963 for publishing elegant erotica, ought to restore the money to reimburse the considerable costs of printing the forthcoming "identity" books on Balzac and Cocteau.

**Hemingway's eternal quest** brought him back again and again to Spain, the country he "loved best after his own." He acknowledged a Spaniard—Pio Baroja—as the writer who influenced him most. He tried hard to unravel the mystery of Spain; my old friend Arturo Barea questioned his success. "Not sharing the beliefs, the life, and the sufferings of the Spaniards, he could only shape them in his imagination after the image of the Spain he knew . . . I think he had once taken Spain, the Spain of the *toreros*, the *señoritas*, Gypsies, tarts, tipsters, and so on, rather as one takes drugs." In view of such reservations it is welcome to find a contrary opinion from an established Spanish novelist and fellow-disciple of Baroja, José Luis Castillo-Puche. Long a close friend of Hemingway, Castillo-Puche gives us an extremely important—and sympathetic—biography, *Hemingway entre la vida y la muerte* (Hemingway Between Life and Death), issued by Destino of Barcelona. The informative volume, admittedly "intuitive and passionately subjective," is a significant record of Hemingway as Spain will remember him.

**The rise of a vein** of youthful satire in German literature is perhaps an even healthier sign for politics than for letters. Such current works as Reinhard Lettau's *Feinde* (Enemies) from Carl Hauser Verlag and Hans Erich Nossack's *Der Fall d'Arthez* (The d'Arthez Case) from Suhrkamp, with their ridicule of authoritarian attitudes, testify to the vigor of a reformed mentality as well as to that of the literary genre itself. We are now reminded of the venerability of satire in Germany by an anthology just arrived from Kiepenheuer & Witsch entitled *Hieb und Stich* (Slice and Thrust). Starting with the epigrams of Friedrich von Logau in the 1600s ("Lutherans, Papists, Calvinists—to come to terms all three Have made a try, so doubt remains where Christendom may be."), the selections move through the centuries to Heinrich Boll's attack on those in post-war Germany who wish to return to the old ways, as epitomized by the traditional Christmas customs (*"Nicht nur zur Weinachtszeit"*). The arrival of Hitler made such satirists as Kurt Tucholsky and the Austrian Karl Kraus too angry to handle their rapiers deftly. This is hardly surprising when we remember that Hitler had Tucholsky's books burned and that Kraus foresaw the *Anschluss* of his homeland with the German Reich.

**The old question** of the political passivity and pessimism of Anton Chekhov continues to occupy the Russian critics. Latest effort in a campaign dating from the 1930s to make Chekhov bristle with didacticism and social significance is Korney Chukovsky's revised *Chekhov* (Khudozhestvennaya). In this redefinition of what Mayakovsky called the quarrel over the "two Chekhovs," we are offered the portrait of a writer "profoundly optimistic and partial." It is another skirmish in the greater war against the idea of art for art's sake. There has been a trend in the 1960s among younger writers to imitate Chekhov's non-didactic stories, and the intensified campaign is no doubt intended to reorient these younger revisionists of fiction.

**The film version** of Vassilis Vassilikos's *Z* (*SR*, Nov. 16, 1968), featuring Irene Papas and Yves Montand, is a smash in Paris. The dictators of Greece will not be happy, nor will they likely forgive Miss Papas for her share in it. It will be a long time before she can return to her native village of Chilomodion, where her father's grave is. The actress, singer, and poet depicts the place in the following nostalgic lines, whose appearance here marks the first publication in English of any of her poetry:

**Washing, washing**
**the sorrows away,**
**bent women at the fountain.**
**Blossoming almond-trees**
**opal, white brides.**
**Snakelike the path to**
**the old monastery.**
**Wild fig trees making love**
**to raspberry bushes**
**cover the small river of**
**fears . . . Oh, childhood!**
**Scented the breeze**
**Flower petals flying make**

(*Continued on page 36*)

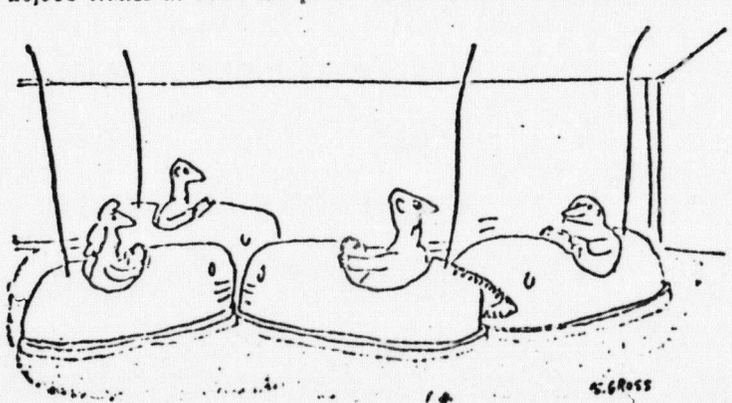

Exhibit C

HEMINGWAY ENTRE LA VIDA Y LA MUERTE. (Hemingway between Life and Death) By J.L. Castillo-Puc

This is a curiously affecting and very Heming wayan contribution to the legend--a tribute by a real friend, devoid of sentimentality, devoid of Hemigwayan pseudo-toughness, tender, and for all that filled with shrewd observations that briefly and gracefully cover all the points Professor Baker managed to grind into 50,000 of the most boring pages ever published.

J.L. Castillo Puche is a young Spanish author "discovered" by St. Ernesto on his first trip back to Spain after the civil war around 1953. They became friends and traveling companions, but obviously the relationship was not one of equals. The spirit of adulation is unavoidable. Neverthele Castillo-Puche's reminiscences--cast in the form of a long monologue following the news of Hemingway's suicide--have a sort of noble honesty clearl missing in Hotchner; they offer a lucid view of Hemingway as seen by an adoring but not uncritical Spaniard very much aware of the tragic flaws--the emotional desert, the immaturity, the self-destruc ive paranoia--but who, intead of either analyzing condemning, simply accepts it as destiny and turns inward to recollections of Life with Papa --in the Spanish bullring, at Pamplona, in the bars of Madri fishing, hunting, a death bed visit to Pio Baroja, etc., always recording Ernesto's own words along with a vision of his --usually tormented--self.

What emerges is indeed a tragic figure, in human terms. At the literary level, Castillo-Puche tends to take things rather for granted, which is probably just as well; a lot of that bull in the afternoon should not be stirred, , and Castillo-Puche's intuitive grasp of the human being is far more impressive than his skill as a literary critic.

BEST COPY AVAILABLE

Heming ay is clearly going to survive, if in no other way than as a symbol, source of legends and topic for little would-be Hemingways. If this necrophiliac industry ever inspires a genuine resurgence of interest in the man, this patticular volume could and undoubtedly would arouse a certai amount of interest botth for its subject matter an its exotic angle of vision. But I suspect that at the moment the bones are picked pretty clean and the market for reminiscences limited.

Ernst Pawel

January 4, 1969

Exhibit R

J. L. Castillo-Puche: HEMINGWAY ENTRE LA VIDA Y LA MUERTE
(Ediciones Destino, Barcelona, 467 pp. 1968)

The merits of this book from the American publisher's point of view can be summed up briefly: Spain was one of the persistent centers of Hemingway's imagination--not just the mystique of the bull-ring, but the character of the people, those medieval survivals that fed his hunger for ritual, pageantry, individual dignity, and the tragic sense of life. For most of his biographers, the meaning of Hemingway's Spanish experience has to be guessed at, just as the meaning of Big Two-Hearted River, the boxers, and the hoodlums of the American stories is likely to elude even a well-informed Chinese commentator. Moreover, Hemingway's Spanish periods were marked by violent adventure, as in the case of the Civil War, or at very least by blood sports, passionate friendships, and ugly quarrels. Castillo-Puche was a very old friend of Hemingway; he holds the key to the experience that was the source of so much of the fiction, the reportage, the essays. He tells the story of Hemingway's life in and out of Spain with affection, and with respect amounting to veneration. Since he is a journalist by profession, and knowledgeable about the United States, his treatment of the American background is adequate, and his account of the Cuban period is detailed, well-informed, persuasive.

On the other hand, the book is addressed to the author's countrymen, and a translation would require some adapting and some notes. The style is lively and colloquial rather than literary, which requires a mastery of the language which is beyond the scope of most foreigners, whose experience is likely to be chiefly of books. Also, the narrative is highly dramatic, and the translator would need to have a good deal of stylistic bounce of his own. Finally, the book is about 175,000 words, and that entails expense.

The publisher has to decide whether, for the story's sake and the photographs, most of which will be new to American readers, he can risk another entry in the Hemingway market. It is certainly true that this one will be distinctive from all the rest, full of novel detail, on a plane at once intimate and decent.

E. C. --2/16/70

cc BG

("Mike") Emile Capouya

DOUBLEDAY & COMPANY, INC. *Publishers*

249a

277 PARK AVENUE, NEW YORK, N.Y. 10017 TEL: 212 TA 6-2000

October 8, 1971

Miss Helen R. Lane
Pine Road
Tuxedo Park, New York 10987

Dear Miss Lane:

This letter, when signed by you and countersigned by Doubleday & Company, Inc., will constitute an agreement for your preparation of a translation from Spanish into English of HEMINGWAY: BETWEEN LIFE AND DEATH by Jose-Luis Castillo-Puche.

It is understood and agreed that you are hired expressly to translate this book, the right to translate which Doubleday has acquired from Ediciones Destino S.L., and that you shall have no rights whatever in or to said translation. The translation, when completed, shall belong to and become the exclusive property of Doubleday, which may protect the same by copyright or otherwise, and which shall have all the rights therein duly accorded to the author of a copyright work.

You represent and warrant to us that your translation is original and has not previously been published and that you will indemnify us from any claim arising from our publication thereof.

Two double spaced typewritten copies of your translation shall be delivered to us not later than October 1, 1972.

We agree to pay you at the rate of Twenty Dollars ($20.00) per one thousand (1,000) English words, and shall make such payment on acceptance of complete satisfactory manuscript.

It is agreed that your name will appear in advertisements for the book and that you will be given the chance to proofread the galleys.

Please sign both copies of this letter below and return them to us for Doubleday's countersignature, after which one copy will be sent to you for your records.

Sincerely yours,
DOUBLEDAY & COMPANY, INC.

Edward Shapiro

Accepted:

Helen R. Lane

Helen R. Lane

met

EXHIBIT T

V



COPYEDITOR'S QUERIES ON COPYEDITED MANUSCRIPT OF HEMINGWAY IN SPAIN

P. 15: line 10--copyeditor suggests footnote for "pedazo de pan". Says he first read it as "doughhead".

P. 66: line 11--copyeditor queries "Who is Camorra?"

P. 74: line 28 (last line)--copyeditor says that, even with a dictionary, he was unable to make anything of the two words encierros and broncas.

P. 87: line 8--copyeditor queries word "darky"; says "nigger" is used elsewhere.

P. 89: line 15--copyeditor ~~MMMMM~~ queries use of "Diudad Universitaria" here and use of "University City" on pages 190 and 735.

P. 98: line 17--"is a very flaccid." Should word "a" be deleted?

P. 125: line 3--copyeditor has changed burladora to burladero. This okay?

P. 127: line 25--"Even if you saw him killed it would not be you who..." copyeditor thinks you should read he.

P. 132: line 21--imparted my blessings on Cerro Corrochano/ Copyeditor suggests Mount.

P. 135: line 24--"bullfights never interested him as spectacle." Copyeditor has added brackets to read "bullfights never interest/ed him/ as spectacle." His marginal comment reads "brackets ok? or is the quote correct?"

P. 190: line 4--for word Universitaria, see note for page 89.

P. 204: line 26 (last line)--copyeditor queries title Lives of the Martyrs. Okay, or Saints?

P. 235: linesS5-8--For sentence beginning "Having this feeling... and go to the bullring." Copyeditor queries "wording ok?"

P. 235: line 17--sentence originally read "and I had seen them at close hand". Changed to "and I had seen some of them at..." by copyeditor who queries "okay?"

P. 256: line 7--Should word crut be changed to crud?

P. 256: line 8--Should there be a hyphen between wide & spread?

P. 286: line 16--line begins "suffered pain...sufficient"/ Copyeditor says this is obscure.

EXHIBIT V

P. 292: line 5--"attributes; that of giving it." Copyeditor queries "is semi-colon okay or should it be colon?"

P. 306: line 4--"We had danced like simbas..." Copyeditor queries word simba--"translation?"

P. 312: line 34 (last paragrpph beginning "The joking and the leg-pulling and the clowning...") Copyeditor makes following comment: "From this point on, references to a 'kidnapping' and to the Irish girl as 'Miss Valerie' (always in quotation marks) appear, but at no point are the references explained. How about a footnote?"

P. 337: line 15--original reads "surrounded by beautiful woman and his many friends." Copyeditor queries "beautiful women" or "a beautiful woman"?

P. 366: line 10--"People were playing chistus and an accordion and a..." Copyeditor queries word chistus: translation?

P. 368: line 20--"nonetheless thoroughly approved of the soleas people..." Copyeditor queries word soleas: translation?

P. 376: lines 10-11--lines originally read "It's love of a city" and "It's love of a man". Copyeditor queries: "It's a love of a city" and "It's a love of a man". Change okay or should the two sentences be left as they were?

P. 376: line 15 (beginning "more like a cellar...zaldiekomadikos"). For two words kilikis and zaldiekomadikos, copyeditor queries "any accents?"

P. 388: line 7--"that paradise to him would be..." Copyeditor queries "Is this literary?"

P. 388: line 13--"meant a trout stream near..." Same query as for line 7.

P. 414: line 16--"I don't think it very likely that Unamunano..." Copyeditor thinks should be Unamuno. this okay?

P. 414: line 19--"I'm sure he wouldn't have. Nor The Death-Throes of..." Copyeditor says: "CBI gives "The Agony of Christianity".

P. 430: line 26--"corrida--he might offer a rendition of "The Ritual Fire Dance"". Copyeditor has added Ritual and queries "Fallas?"

P. 475: line 24--Copyeditor suggests that word "palomita" be translated.

(ms. 521) P. 515: line 1--Copyeditor queries word barojianos. Is spelling okay?

(ms. 547) P. 536: line 12--"at Oxford or in the Sahara, at Vera or in India, searching..." Copyeditor queries "Is Vera a place of archaeological interest?"

(cur 547) P. 536: line 14--"Pio, a very nice person, was doubtless..." Copyeditor queries "Julio's not nice?" I suppose he questions comparison seemingly made between Pio and the other nephew Julio.

(cur 570 557) P. 557: line 4--"the Puerta del Sol, and then Cibeles or Atorcha." Copyeditor queries spelling of word "Atorcha". Should it be spelled "Atocha"?

(cur 583 570) P. 570: line 3--"country, Navarre, Aragon, Galicia, the two Castilles..." Copyeditor queries word Castilles: "Spelling as in the original?"

(cur 583) P. 570: line 9--"to La Mancha and La Alcarria..." Copyeditor queries spelling of word "La Alcarria"? "Spelling okay? Can't find."

(cur 586 583) P. 573: line 12--"a flask or two of Chinchon as well..." Ce queries word "Chinchon": What's this?"

(cur 603) P. 590: line 17--"of a Lucullan feast. They first brought him a huge turmix..." Ce queries word "turmix"? "What's this?"

(cur 617) P. 603: line 25--"Levante, and Asturias of course..." Ce queries spelling of word "Levante".

(cur 620) P. 606: line 13--"many red and black flags--the anarchist colors..." Ce queries: "Did the anrachists use red flags?"

(cur 666) P. 647: line 4--"packed with vacationers headed for the Levante..." Ce queries: "Is this (Levante) a Spanish place name, or is it just poetical for "east"?"

(cur 671) P. 652: line 6--"smoke and the flash and the noise of the traca going..." Ce queries word "traca": is it okay?

4 P. 652: line 16--"beer; the storks on the houses in Barca de Ávila..." Ce queries: "Accent in the original?"

(cur 672) P. 653: line 9--"cape on the long gravelled paths..." Ce queries spelling of word "gravelled?": "Spelling as in original?"

(cur 679) P. 660: line 6--"uncle Matias and Juanito Quanito..." Ce queries: "Quanito okay or is it Quintana?"

(cur. 689) P. 668: lines 7-8--Line # between these two sentences?

(cur 704) P. 683: line 6-- "Puerto de Santa Maria next week..." Puerto okay or should it be Puerta

(cur 736) P. 712: line 1--"of the sobreros, extra bulls shipped off to the bull-ring;but never used;" Ce queries word "never"?

7 P. 712: line 25--"like the delightful tinkle of a cattle bell in the" Does he mean cowbell? and is tinkle the right word?

(cur 755) P. 731: line 5--Plaza de Callao, rather than the pension..." Ce queries: "Is Plaza del Callao" okay?"

your 757) P. 735: line 22--"food, he goes to the Pardo with a shotgun and ..." "Is word Pardo okay?"

your 76 your 759) P. 737: line 1-14--"meets an American writer and journalist, Martha Gellhorn...and Ernest is bent on returning to Spain as quickly as possible." Ce: "Shouldn't this paragraph be in the '1938' section?"

your 762) P. 739: lines 1-6--Ce: "The chronology for 1940 seems out of whack."

your 763 your 763) P. 739: line 16--"law passed by the Senate allowing merchant..." Ce says: "law passed by Congress". This okay?

" P. 739: line 17: "conceives the idea of arming the Pilar to go out chasing..." Ce: "What happened to this idea?"

your 766) P. 742: line 21--"1953 This year marks his return to Spain after fifteen years..." Ce changes 15 to 14: "on page 84, he 'left Spain in 1939.'"

your 770) P. 746: line 13--The Batista regime in Cuba to collapse..." Ce: "This should be under 1958 instead of 1957?"

(Y)

October 10, 1973 -1-

From Helen R. Lane, translator:

ANSWERS TO COPY EDITOR'S QUERIES ON MANUSCRIPT TRANSLATION OF J.-L. C[illegible]illo-Puche's HEMINGWAY IN SPAIN.

General notes to copy editor:

(1) In the Scribner's editions of all of Hemingway's works, there are no accents on any Spanish proper names -- either of people or of geographical locations. Please see that this style is observed in all the direct quotes from Hemingway works in Castillo-Puche's book. In my view, Castillo-Puche's own text should have usual Spanish accents, as I have supplied them.

(2) There are also a number of quirky spellings in the Scribner's editions of Hemingway works. No one, for instance, is always written as two words, and often there are double-l spellings (gravelled, travelled, Castilles, for instance). Please follow spellings of quotes as I have given them in the ms., save for the corrections of a couple of quotes that I have supplied below.

---

All page numbers below refer to the manuscript as now renumbered. From page 515 on, I also indicate in parentheses my original manuscript page number.

P. 15: line 10. Do not change my text. "Pedazo de pan does not mean "dough-head," but rather, as I have indicated by amending C-P's text, someone who's a bit dumb but also nice and good-natured and harmless. And here as elsewhere, on Kate Medina's advice, I have avoided footnoting Spanish terms and instead endeavored to explain, largely by means of explanatory parenthetical material between dashes or commas, what the Spanish terms means without being obtrusive to the general American reader.

P. 66: line 11. After the name Camorra, to clarify add between commas the explanatory ~~extend~~ phrase "a Spanish friend of his."

P. 74: line 28 (last line). Delete the comma at the end of the sentence, substituting for it a dash, followed by the explanatory phrase "the running of the bulls through the streets and hoots from the crowds in the stands at the bullring." (For copy editor -- these are the meanings, respectively, of encierros and broncas.) Note that the last word of this added phrase will run over to the first word, bullring, on the following page 75.)

P. 87: line 8. Change darky to "nigger."

P. 89: line 15, and P. 190: line 4, and page 735: In all three places use consistently either "Ciudad Universitaria" or "University City." My preference is for the Spanish form, but Doubleday house style may indicate otherwise.

P. 98: line 17. Delete word a. Should read "is very flaccid."
Also change Anselme to Anselmo directly above in line 16, same quote.

P. 125: line 3. Change burladora to burladero.

P. 127. Do not change quote. Hemingway text, Death, page 213, definitely reads "it would not be you who..."

P. 132: line 21. "Cerro"here definitely does not mean Mount, as copy editor suggests. It is a first-name nickname. It could therefore possibly be enclosed in quote marks, if it is Doubleday house style to so enclose Spanish nicknames such as "Paco" or "Pancho" and the like.

P. 135: line 24. Since C-P never supplied the missing quote here, problem will best be solved by removing the quotes around the phrase "bullfights never interested him as spectacle" -- this simply letting it stand as a phrase by C-P regarding Hemingway.

P. 190: line 4. See note for page 89 above.

P. 204: line 26 (last line). Do not change title: Should read as is:
Lives of the Martyrs, a popular Spanish religious book.

EXHIBIT Y

ANSWERS TO COPY EDITOR'S QUERIES ON MS. OF HEMINGWAY IN SPAIN
(page 2)

P. 235: lines 5-8. Please amend this page to read as follows (beginning at top of page):

¶ As he had written years before in Death in the Afternoon:

¶ "/Spaniards/ know death is the unescapable reality, the one thing any man may be sure of; the only security... they think a great deal about death and when they have a religion they have one which believes that life is much shorter than death. Having this feeling they take an intelligent interest in death and when they can see it being given, avoided, refused, and accepted in the afternoon for a nominal price of admission they pay their money and go to the bullring."

¶ The scene in the public square in For Whom the Bell Tolls is a masterful study of a vulgar, brutal, vile mass killing, in the style of Goya, a bloody, drunken orgy.

(Rest of page okay -- HL)

---

(Note to copy editor: unescapable is correct spelling in the Death quote above.) (Note to Kate: other additions and changes above seem called for to smooth out transition in C-P's text from one Hemingway work to the other. Also, copy editor was correct -- quote as supplied me by C-P had errors in last line: apparently a misprint in his edition. Quote appears as above in the 1960 Scibner Library paperback edition of DEATH -- I have re-checked.) (Editorial brackets around Spaniards to indicate ellipsis in quote.)

---

P. 235: line 17. Stet text as changed. Should read "And I had seen some of them at close hand."

P. 256: line 7. Stet word crut. This is the way the word appears in the Hemingway quote, Bell, page 364. I have rechecked.

P. 256: line 8. I would say yes: there should probably be a hyphen between wide and spread -- there is one in the text, at the very end of the line, Bell, page 364, Scribner Library edition. I have re-checked.

P. 286: line 16. Sentence queried by copy editor as "obscure" might be clearer if sentence is amended to read would be conjoined" instead of were conjoined."

P. 292: line 5. Stet semi-colon in quote after word attributes. This is how it appears in 1960 Death edition. I have re-checked.

P. 306: line 4. To clarify Spanish word simbas queried by copy editor, add in between commas after it the explanatory phrase: "the Pamplona word for carnival dancers"

P. 312: line 34 and following pages. When copy editor and reader go on farther, the reference to a "kidnapping" is fully explained in C-P's text, when he deals with Ernesto's last visit to the Pamplona festival. I think, therefore, that simply enclosing the word in quotes at this point in the book is quite sufficient -- reader will see why Ernesto is here so described later on. As for "Miss Valerie," C-P never does give her full name in the Spanish text, and Carlos Baker's biography of Hemingway refers only to an "Irish girl" with Hemingway at Pamplona. Originally C-P was going to add material on this "Miss Valerie" -- but of course it was never forthcoming. I am afraid that someone must query him, therefore, as to what her fully name is, and whether or not he wants it to be used in the book.

P. 337: line 15. Text should read "beautiful women."

P. 366: line 10. Change text to read "People were playing Galician bagpipes and drums and an accordion and a..."

ANSWERS TO COPY EDITOR'S QUERIES ON MS. OF HEMINGWAY IN SPAIN
(page 3)

P. 376: lines 10-11. Stet text. Should read: "It's love of a city" and "It's love of a man."

P. 376: line 15. No, C-P's text, his page 245, does not give any accents for these two basque words: kilikis and zaldiokomadikos.

P. 388: lines 7 and 13. Stet text. This is direct paraphrase of the Hemingway quote supplied by C-P only in Spanish, and it seems perfectly clear ~~xxxxxxxx~~ that it is indeed, as copy editor queried, "literary style."

P. 414: line 16. Name should indeed be Unamuno.

P. 414: line 19. Follow CBI and use title The Agony of Christianity.

P. 430: line 26. Change text to read "... he might offer a rendition of de Falla's Ritual Fire Dance..."

P. 475: line 24. C-P wrote me that he would prefer all the names of drinks to be left in Spanish. But the explanatory phrase "a white anis drink" could be added, between commas or dashes, after the word palomita here since copy editor thinks a translation necessary.

P. 515 (my original p. 521): line 1. Stet. Spelling barojianos correct. Cf. C-P, page 329. This is usual adjective form of name Baroja, and usual Spanish word for describing his followers and disciples.

P. 536 (my original p. 547): line 12. Stet the word Vera. A place in Spain where extensive archaeological diggings have been going on.

P. 536 (my original p. 547): line 14. Since copy editor seemingly questions the implied comparison between Pio and Julio in my phrase "a very nice person", the phrase could be changed to "who had always seemed to me a most likeable person." Don't really see the necessity for such a change however -- I don't feel that a comparison is implied in my straight translation of C-P's parenthetical phrase describing Pio.

P. 557: line 4 (my original page 570): Change Atorcha to Atocha.

P. 570 (my original p. 583). line 3. Stet spelling Castilles. This is the way the word appears in BELL, 1940 edition, page 268.

P. 570 (my original page 583): line 9. Stet spelling La Alcarria. That is how it is given on C-P's page 361, at any rate -- though like the copy editor, I am unable to find it in any of the atlases or gazeteers I have. Should C-P perhaps be queried?

P. 573 (my original p. 586): line 12. Again, C-P would prefer the name of this drink to be left in Spanish, but the explanatory phrase, between ~~xxx~~ commas or dashes, "a strong white ~~xxxxxxxxxxxxxxxx~~ anis-flavored drink" could be added.

P. 590 (my original page 603): line 17. A turmix is a stew full of seafood ingredients. I would recommend that the Spanish word be left as is, since it is clear from what follows in the English what sort of a dish it is.

P. 603 (my original page 617): line 25. Stet Levante here. It is correctly spelled -- one of the provinces of Spain (like Asturias, Navarre, etc.)

P. 606 (my original page 620): line 13. I agree with copy editor that anarchist flags are usually black only, and not red. I think, however, that in Spain they may well have been both black and red, since many anarchist groups were also Communist-oriented. C-P's Spanish text definitely reads "Many red and black flags -- the anarchist colors." Should C-P perhaps be queried to clarify? (His page 380).

P. 647 (my original p. 666): line 4. Change the phrase "the Levante" to read merely Levante. See answer to p. 603 query above -- Levante a province of present-day Spain, and definitely not a poetic word for "east," as copy editor suggests.

ANSWERS TO COPY EDITOR'S QUERIES ON MS. OF HEMINGWAY IN SPAIN
(page 4)

P. 652 (my original page 671): line 6. Stet the word "traca." This is how the word appears in DEATH text, page 271.

P. 652 (my original page 671): line 16. Text place name should read Barco de Avila -- without an accent, since here as throughout, Scribner editions of Hemingway do not use accents for any proper names.

P. 653 (my original page 672): line 9: Stet spelling gravelled. This is how it appears in Death text, page 278.

P. 660 (my original page 679): Change Quanito to Quintana.

P. 668 (my original page 689): lines 7-8. In C-P's text, there is no 2-line break after the first paragraph on this page (ending with the words "still ringing in my ears"). But I agree with copy editor that there should be one here. (C-P's page 416.)

P. 683 (my original page 704): line 6. Stet the place name Puerto de Santa Maria. This is a port city, hence name ends in o, not a, as copy editor suggests.

P. 712 (my original page 736): line 1. I have added the paranthetical phrase "extra bulls shipped off to the bullring but never used" to explain the Spanish word sobreros. Copy editor apparently does not think this is clear. Text could be changed so that parenthetical phrase in explanation reads "extra bulls shipped off to the bullring and returned to their ranches without ever being used in a corrida" if such a change seems worth making to further clarify the reference to sobreros. Change doesn't seem worth the cost of altering galleys however -- seems fairly clear as is, no?

P. 712 (my original page 736) line 25. Change tinkle of a cattle bell to jingling of a cowbell if you prefer.

P. 731 (my original page 755): line 5: Stet Plaza de Callao. This is how the name is given on C-P's page 452.

P. 735 (my original page 759): line 22. Pardo is correct. Stet. (A large park in Madrid -- not a spelling error for Prado.)

P. 737 (my original page 761): lines 1-14. The copy editor's suspicions about the chronology of Hemingway's meeting with Martha Gellhorn being somehow incorrect here! Carlos Baker indicates that H. first met her in 1936 in Key West, in the month of December. I suggest that the sentence "Hemingway meets Martha Gellhorn in Key West in December" be added to the end of the 1936 entry in C-P's chronology. Then his 1937 entry on this page 737 of the translation ms. should read: "In August he returns to Spain, remaining there until November, 1938. On arriving in Madrid, he again meets Martha Gellhorn, now a correspondent covering the Civil War in Spain for Collier's." (Then continue on with this paragraph on page 737 as written.)

P. 739 (my original page 763): lines 1-6. In the chronological entry for 1940 on this page, agree with copy editor that chronology would read better if the second sentence of the entry, (concerning Ernesto's and Pauline's divorce and his marriage to M. Gellhorn) were shifted to the end of this 1940 entry, as a separate paragraph.

P. 739 (my original page 763): line 16. Change "law passed by the Senate" to "law passed by Congress," as copy editor suggests.

P. 739: line 17. Copy editor queries what happened to idea of arming the Pilar? If you like the sentence (source Baker) can be added: "The Chief of Naval Intelligence, Colonel J. W. Thomason, approves, and Hemingway assembles a crew and outfits the Pilar with machine guns for submarine-patrol duty."

P. 742 (my original page 766): line 21. Stet fifteen years. Baker indicates that Hemingway left Spain in November, 1938. Change therefore, on page 84 of the translation ms., the sentence "left Spain in 1939" to "left Spain in 1938."

P. 746 (my original page 770): line 13. Change to read: "The Batista régime, under strong attack by Fidel Castro's forces, is reaching the point of collapse." Leave this sentence as rewritten under 1957, rather than shifting to the 1958 [illegible] have both copies of the edited CHRONOLOGY, and a little

JULIUS O. PURCZINSKY, called as a witness by the plaintiff, being first duly sworn, testified as follows:

p. 38

THE COURT: Members of the jury, we are taking this testimony for a rather limited purpose and subject to connection and I'll take that up with you later on; but as you will see, what this witness is going to testify about is translations of the Spanish book other than the translation of Helen Lane and he is not testifying about the ultimate English book which is what is sued on here and I'll put this all in a proper context for you later on, but just bear in mind that's what he is talking about.

All right, go ahead Mr. Rosenman.

DIRECT EXAMINATION

BY MR. ROSENMAN:

p. 39

Q Would you tell me what your occupation is?

A I'm an associate professor at Hunter College.

Q In what subjects?

A In Romance linguistics and Spanish, in the Romance Language Department.

THE COURT: Speak up nice and loud. Anybody who can't hear a witness at any time during this trial, please just raise your hand and say, "I can't hear."

What's a Romance language?

THE WITNESS: Languages such as Spanish, French, Portuguese and so on are Romance languages.

Q Will you give me your educational background, please?

A I did my bachelor's at Baylord University in Waco, Texas and then I did my master's and doctorate at
p. 39 the University of Texas in Austin. I received my doctorate in 1957.

Q Where did you teach thereafter?

A I taught for a year at Baylord. Then I had a Fulbright to teach at the University of Athens teaching English for a year. Then I taught two years at the Southwestern Louisiana Institute in Lafayette, Louisiana. It's now called the University of Southwestern Louisiana.
p. 40 Then I taught for two years at Kansas State, which is in Manhattan, Kansas. And then I taught two years at the University of Nevada in Reno. And then I came to Hunter College in 1965.

Q Have you written articles for and book reviews, for learned journals?

A Yes, I have. And my field encompasses the study of the meanings of words among other things. Also I have taught courses in Spanish literature. I have studied Spanish literature and in these matters we have to consider what the proper translation of something is.

Q Do you read, write and speak Spanish?

A Yes, I do.

Q Do you lecture in Spanish?

A Yes, I lecture in Spanish certain of my courses; I am giving two now which I lecture in Spanish.

Q At my request did you translate certain pages of the original Spanish version of the book entitled "Hemingway: Entre La Vida y La Muerte" by J. L. Castillo-Puche?

A Yes, I did. The Spanish was given to me and I translated it into English.

p. 40

Q Is the translation that you prepared for me an accurate and correct translation?

p. 41

A Yes, it is.

MR. ROSENMAN: I offer it, your Honor.

MR. ROSENMAN: I would like to offer in evidence a magazine article --

p. 42

THE COURT: Would you like to finish with this witness first?

MR. ROSENMAN: Yes, your Honor. He is part of this. I would like to offer in evidence as Plaintiff's 34 an article in a Spanish magazine named "Gaceta Illustrada" entitled "Hemingway canta el riau-riau" written by Castillo-Puche.

THE COURT: What number?

MR. ROSENMAN: 34, your Honor.

MR. CALLAGY: No objection, your Honor.

THE COURT: Received in evidence.

p. 43

(Plaintiff's Exhibit 34 for identification received in evidence.)

THE COURT: Is there a translation to go with that?

MR. ROSENMAN: Yes, there is, your Honor.

Q Prof. Purczinsky, at my request did you likewise translate that article from Gaceta Illustrada?

A Yes, I did.

Q Is the translation you prepared a correct -- true and correct translation of that work?

p. 43 A Yes, it is.

MR. ROSENMAN: I offer it in evidence as Plaintiff's Exhibit 35.

THE COURT: You have 35 already, I believe. You can have that 34A if you like.

MR. ROSENMAN: I'm sorry. That was a mistake, 35 should have been No. 30; 30 for the three-column translation.

MR. CALLAGY: Prof. Purczinsky, when did you prepare the translation of the Gaceta article?

THE WITNESS: I did all of my translating work this past week. I was contacted on Tuesday and everything that I have done was done since then. I did everything that I have done in the way of translating this past week. I

p. 44 was contacted on Tuesday and I have done everything since then.

MR. CALLAGY: This is a translation of the Castillo article which is Plaintiff's Exhibit 34, is that right?

THE WITNESS: Yes.

THE COURT: No objection.

What is the date of that article?

MR. ROSENMAN: The date is August 8, 1959.

THE CLERK: Plaintiff's 1, 26, 30, 34 and 35 received.

(Plaintiff's Exhibits 30 and 35 for identification received in evidence.)

MR. ROSENMAN: I have no further questions of Prof. Purczinsky.

THE COURT: You may cross-examine.

p. 44

CROSS-EXAMINATION

BY MR. MARSHALL:

Q Prof. Purczinsky, have you had occasion to translate entire books to be published for publishers in America?

A I have never done any translation for publication.

Q I am sorry?

A I have never done any translation for publication.

Q Are you aware of the object of a literary translator when translating a book from a foreign language into

p. 45

English?

A Yes, but I would think the first object would be to translate accurately.

Q Do you think a literary translator would translate word for word an entire book or would a literary translator take some liberties in translating for the sake of making the work readable English or understandable for an American audience?

MR. ROSENMAN: Your Honor, that's a hypothetical question.

THE COURT: Well, if the witness understands the question and it pertains to his line of work, he can answer it.

A I would say with qualifications, yes, but it would not do to be so free as to misrepresent either the emotional tone or the point of the original.

Q When you translated these passages that plaintiff's attorney gave you, were you translating them on a literal word-for-word basis?

p. 45

A Very much so, though not completely. It's impossible to be totally literal.

Q Is there a chance you might have translated anything in those passages differently if you were translating the entire book?

p. 46

MR. ROSENMAN: Objection, your Honor.

THE COURT: Overruled.

A I don't think I would ever translate these passages myself for anyone since Mr. Hotchner is alive.

THE COURT: He is asking you to assume, if you were retained to translate the book. Whether the book has any merit is not before us.

A I don't think I would agree to do that if I were asked to do it under the circumstances. If Mr. Hotchner were dead, it would be quite another question.

Q I am not asking you that. I'm just asking you regarding your expertise as a translator from Spanish, which is all we are concerned with.

A You can be as free as you like with a translation but the closer the translation is, everything else being equal, the better. I don't think it would be a good thing to just say "Well, in the interests of style, I'm going to change everything in this translation," or "I'm going to misrepresent it a good deal in the interests of style." And I think -- as far as I'm concerned, I don't think it's irrelevant whether someone is being talked about badly.

Q I am not asking you whether you would misrepresent anything, Professor. I am just asking you if --

p. 47

A In order to make a translation that is not free, you would have to change the text somewhat. Now, I don't think you could change it very much without misrepresenting it and it seems to me the moral question is important.

Q In translating from Spanish, is there only one English word that is the equivalent of any given Spanish word?

A No. Of course, there are several and they are often not exact equivalents.

Q So if we had ten literary translators here and asked them for their translation, do you think it's likely they would produce the identical translation?

A They wouldn't be identical but I think if they were trying to be at all accurate they would be very similar. For instance, Mr. Rabassa's translations which I have seen, resemble mine very much. I understand he is translating this for the Doubleday people.

Q Did you base some of your translation on Mr. Rabassa's translation?

A No, I haven't.

Q Did you base your translation of any words in these passages on Mr. Rabassa's translation?

A No.

p. 48

Q What did you base your translation on? Were you familiar with all the words personally?

A No. I considered dictionary meanings and I also consulted people as to what they thought about these, although this is a matter obviously which you just don't

p. 48 go out and ask the first person and write down whatever they say.

Q Why was it necessary to consult dictionaries and ask other people?

A Some of these words are slang of one kind or another and some of them are words that are just not too frequently used.

For instance the word"atravisado"and just about everybody knows this word in the sense of crosswise physically, but in the sense that you could apply it to someone as to his character, a lot of people don't use the word at all and the dictionary gives as a meaning, the dictionary, several dictionaries give as a meaning "of evil or harmful inclination or perverse or harmful inclination." And so various translations could be suggested.

The one I picked was "treacherous."

The suggestion "devious" has also been made.

Q Is there any way you can be sure what Mr. Castillo meant, the Spanish author, when he used this word?

p. 49 A Obviously there is no way I can read Mr. Castillo's mind but we will assume that whatever he says in effect is to be taken according to the ordinary meaning, I think, and this, I believe, would be a justifiable thing for a translator to do.

THE COURT: What is quinqui?

THE WITNESS: I have since found that word. It means "a person who holds up banks or stores." I found it

p. 49 in a dictionary. I have found two references to this word. In one of them a writer of a dictionary called the "Secreto Dictionary," he is writing about sexual terms, and he mentions that he uses various types of slang or cant and he uses the Spanish word for criminal, cant, and the word for one of these types is the quinqui and then --

Q Where did you find that?

A I found that in a work by Camilo Jose Cela and is called the"Diccionario Secreto" and he lists the various argot that he uses, the various cants, criminal slang that he has included in his references and one of these is that of these quinqui. I found the word defined in a dictionary by a man named Martin Alonso and that's the Diccionario Del Espanol Moderno. And he defines it as "criminal adventurers of the organized underworld who attack banks and shops and that is what a quinqui is.

Q Can you tell me how that word appears in the

p. 50 Spanish text?

A He says he has the outward appearance.

Q Can you tell me how it is typed?

A It is typed in quotation marks.

Q Does this indicate to you that it is slang?

A Yes.

Q Have you lived in Madrid?

A No.

Q Have you been to Madrid recently?

p. 50 A Not recently.

Q Are you familiar with the slang of Madrid?

A No. I got this from a dictionary.

Q Do you not think it's possible that slang can change rather rapidly?

A I have the date of the dictionary's publication here. Excuse me, I'm sorry. It's 1966.

Q Aren't you familiar with English slang, American slang? Does that not change every year or two?

A Well, not that rapidly. A mugger is still a mugger. One of the words in here used to be mugger, but not any more.

Q Are you personally familiar with how the word "golfo" is used in Madrid?

p. 56 A I had to look this word up.

Q Thank you.

A I also talked to several people about it.

THE COURT: Is this a slang word, too?

THE WITNESS: It's on the borderline. It is in the dictionaries. Even the academy dictionary.

Q Did you read the entire book "Hemingway: Entre La Vida y La Muerte"?

A No.

THE COURT: You haven't read it in English or Spanish?

THE WITNESS: No, I have not.

Q Have you read any significant portion --

A I have read only these parts that I was asked

p. 56 to translate with a paragraph or so before or after that was included in the Spanish version that was given to me.

Q You read this entire article?

A Yes, in translating it.

Q Were there any passages in this article that were written -- that were published August 8, 1959, that were

p. 57 similar to any passages that you were supplied by plaintiff's attorney from Mr. Castillo's --

A There was one passage that comes to mind.

Purczinsky

MR. CALLAGY: Your Honor, I would move to strike the translator's testimony on two grounds:

One, irrelevant; and

Two, based on his testimony and the fact that he had to discuss this with other people while translating it, from his own knowledge he is not an expert.

THE COURT: I would give the usual expert witness charge. I would leave it to the jury. I think he is competent to testify. Whether his testimony would have as much weight as a person who belongs currently to cafe society in Madrid is a question that can be argued to th

jury, but I think it's permissible to have an expert to have recourse to dictionaries. I know in my work I do so in English. I don't think it's inadmissible on that ground. The weight to be given to it is a question for the jury and I will charge it. If they don't think he knows what he is talking about, it won't have much weight.

p. 67

MR. CALLAGY: When he testified time and time again he had to speak to people --

THE COURT: The jury will weigh that factor in considering the degree of his expertise.

MR. CALLAGY: I come back to the major thrust and that is that his testimony has no relevance to what Doubleday knew or should have known.

THE COURT: You know, all of us have been boggling an interesting point in this question. You know the statement on agency says: "An independent contractor can be an agent."

MR. ROSENMAN: We have a case on that too, your Honor.

THE COURT: Why didn't you tell me about that case? The case may be such that notice to Mrs. Lane may be notice to your client. That may be a jury question. I'm not reaching that question at this moment. You see, the --

p. 68

MR. CALLAGY: The plaintiff has not laid a foundation for the admission of that testimony.

Purczinsky

THE COURT: That may be so. I took it out of order because of the availability of the man. I will reserve on a motion to strike it out. I think you all

p. 68

ought to concern yourselves as to whether first, is it a jury question; and second, if it is, isn't there enough evidence here to perhaps impute Lane's knowledge to Doubleday. This is the kind of work which would ordinarily be done in house. They hired somebody to do it and, of course, she did it in her library at night and didn't supervise her. The differences between what she wrote and what Prof. Purczinsky wrote aren't that great.

Hotchner-direct

Q Were you aware that Plaintiff's Exhibit 2, "Hemingway: Entre La Vida y La Muerte" was published in Spain when it was?

A No.

p. 91

Q You never heard of it?

A No.

Q When did you first hear about it?

A After I was aware of the English --

Q Plaintiff's Exhibit 1, the book in question?

A Publication of "Hemingway in Spain," yes.

Q Would you tell the jury about the history of

p. 93

your relationship with Ernest Hemingway from 1948 until the time of his death?

A The first year --

THE COURT: That could take all day.

As I understand it, the gentleman himself has published a book of some 5- or 600 pages about this, hasn't

he?

MR. CALLAGY: Your Honor, we have conceded that Mr. Hotchner was a friend and business associate of Hemingway's.

MR. ROSENMAN: I don't want the concession he is a business associate. Your Honor, the jury is not going to read this book.

p. 94

THE COURT: I know, but I can't have a whole afternoon of discourse and that question you just asked this man, he could talk for two days on it without repeating himself.

MR. ROSENMAN: Your Honor, if he promises not to talk for more than 15 minutes?

THE COURT: No negotiations.

Frame another question.

Q Did you thereafter see Mr. Hemingway on a regular basis?

A Yes. In the beginning, as editor of Cosmopolitan, I saw him because he did write a book called "Across the River and into the Trees" and we published some of it in the magazine, and in that connection he contrived that I go to Paris with him. I left the magazine to become a free-lance writer. And over the course of the next 14 years, I saw Ernest regularly in Cuba, in Spain, in New York, in Idaho, in France, in Venice. The relationship was primarily that of friendship. We hunted in Idaho. We -- I saw him -- I was doing an article on the queen of Holland in 1954. He was in Venice. He had an air crash. He was hurt. He had

p. 95

to motor from Venice to Madrid. He called me and asked whether I would go with him so I came to Venice and we motored together to Madrid. That was simply to help him over a bad time.

p. 95

MR. CALLAGY: I object.

THE COURT: I think he finished the answer.

Q Thereafter --

THE COURT: I can't take that type of question.

Do I understand that during this entire period, you were employed as a free-lance writer for your own account?

THE WITNESS: Yes, I earned my living on my own doing primarily, at that time, magazine articles.

THE COURT: Next question.

Q Did you see Mr. Hemingway -- I think you stopped in 1954 -- did you go with him to the Riviera in 1954?

A Yes, that was that trip that I just outlined: Venice to Madrid.

MR. CALLAGY: Same objection as to leading the witness.

THE COURT: Frame the next question.

Q After you left the Riviera in 1954, did you have

p. 96

occasion to go back to Madrid?

A We wound up in Madrid on that occasion.

Q On that occasion, did you see Castillo-Puche, the author of this book?

A I had never seen Puche.

Q Have you ever been introduced to him by Hemingway or anybody else?

A No.

Q When you saw the picture of him contained in

p. 96 Plaintiff's Exhibit J, did you recognize it?

A I did not.

THE COURT: You didn't recognize the picture or you didn't recognize the man who has been stated to be Castillo-Puche?

THE WITNESS: Neither, your Honor.

THE COURT: You recognize that it's your picture?

THE WITNESS: I recognize myself.

Q The next year, you saw him down in Key West, Florida?

A Hemingway?

Q Yes.

A Yes.

Q In 1956, did you have occasion to go to Spain with him?

A Yes.

p. 97 Q Would you describe that very briefly to the jury?

A I was living in Rome at that time. He called me to say that he was in Madrid and there was going to be a great bullfight in a town called Saragosa, so I came to Madrid and motored to Saragosa with Mr. Hemingway and his wife, Mary Hemingway, and we had a very enjoyable time there. I came back with them and we stayed at the Hotel Philipe II, which is outside Madrid in a place called "The Escorial."

Q In 1958, did you visit them in Idaho?

A Yes, I did, in Ketchum.

Q How long did you stay on that occasion?

A Perhaps two weeks.

p. 97 Q Did you have occasion to go to Spain in 1959 to meet Hemingway and Mrs. Hemingway?

A Yes.

Q And that's the occasion in which Plaintiff's Exhibit 1 describes the fiesta in Pamplona?

A Well, that was but one week of the summer. Ernest asked me to come not later than June 28th because his plan was to follow --

MR. CALLAGY: I object.

MR. ROSENMAN: I don't see why that's objectionable.

p. 98 THE COURT: No, I don't think it's objectionable in view of the allegations here. I would like you to keep your answers brief, though, and track the question. If counsel wants to ask another question, he certainly can do that.

A All right, briefly, I was to meet him because the plan of the summer set up by him, long in advance, was to make a tour of Spain following the matador, Antonio Ordonez. This would be then my second time at bullfights, having been with him in '54. I arrived too late in Madrid and had to meet them in the town of Alicante, and we then stayed together -- by "we" I mean Ernest Hemingway, a man named Bill Davis, who lived in Malaga and whose guest Ernest was for the summer, as I was -- and we then, the three of us, toured around Spain that summer.

Now, this week in Pamplona, Pamplona is a town in the north where once a year there is a fiesta, a Mardi Gras-type of event at which bulls run in the streets to the
p. 98 bull ring, amateurs can fight the bulls. It's a time when all the natives go into a ceremony called the "riau-riau," r-i-a-u - r-i-a-u. And it's a time I can only describe to you as like New Year's Eve in Times Square. For seven days and nights it's a revelry as you have in the Mardi Gras which you heard about. That's Pamplona.

We were met on occasion during this tour by
p. 99 Ann Davis, the wife of Bill Davis, and by Mary Hemingway. They often would come up from Malaga and meet us. In the case of Pamplona, they did. On all of these occasions, there would be a group. From the first time I met Hemingway that group would be very close friends whom Hemingway trusted, liked to have around and enjoyed the company of. In this case that close group in Pamplona, on the seven days that Puche described in this book were, besides Bill Davis and myself, Mrs. Hemingway, Mrs. Davis, Dr. George Saviers, his wife Pat. Later on, that is, two or three days into the feria, there was a young man and his wife named Hugh Millet. His wife's name was Susie. There was Peter Buckley and his wife, and in the beginning a young man named Mervyn Harrison who was a student.

Mervyn Harrison made the fatal mistake of not showing up one time for a bullfight and also confessing to Hemingway that he had spent money, that Hemingway had sent

him as part tuition to go to school in Paris, he had spent it instead living well; so before all of us, Hemingway said, "You are not to be trusted. You are out of the group"--

p. 99

MR. CALLAGY: I object to this point. This testimony is completely irrelevant.

THE COURT: I will take it for the limited purpose of showing the character of Hemingway.

p. 100

A In front of us all, at the bar El Choko, when Mervyn Harrison showed up after the bullfight, after having confessed to squandering the money, Hemingway said, "You are not the kind of man I thought you were. I really don't want you around the group. Consider yourself a complete stranger," and that was the end of Mervyn Harrison.

So that was the group.

At no time did I observe the gentlemen's face that appears in this book, Puche. Mind you, there was a milling crowd in Pamplona, especially the bar Choko. There were hundreds of people who came up to the table, who surrounded the table. I do see pictures of Puche in this book, so obviously he was there. I looked into my files and found that I had a magazine article written at the time in a magazine called "Gaceta."

THE COURT: That's not responsive to any open question.

Q What happened in Ketchum thereafter during this visit?

THE COURT: In your presence.

Q In your presence.

p. 105

A When I arrived, Ernest met me at the train, which is a considerable distance from Ketchum. He was in a terrible state. He was convinced by now that the federal agents were after him. He was convinced that he couldn't write any more. Mary Hemingway was terribly concerned about him and so were some of his other friends there: Dr. Saviers, who I described before; he is a doctor in Sun Valley. Mary said, "We can't seem to do anything for him here and I'm very afraid that Ernest may do something drastic. He had attempted to commit suicide on one occasion." I promised her that I would do what I could to get Ernest psychiatric help.

When I went back to New York, I consulted a leading psychiatrist who, working with Dr. Saviers in Ketchum, arranged for Ernest to be admitted to the Mayo Clinic in

p. 106 Rochester, Minnesota in the psychiatric ward.

Q Thereafter, did you visit Hemingway at the Mayo Clinic?

A Yes. At one point, the doctors thought it might be all right for Ernest to have -- they told me, Dr. Rome told me, himself, that it was all right for Ernest to have one visitor and he told me he was going to let Ernest have a phone call; that he would call me, and he wanted

me to be precise about what I said to him, so he rehearsed with me my response. When Ernest called, I said I would be happy to go and I flew to Rochester, Minnesota and I saw
p. 106 Ernest there in the Mayo Clinic in the psychiatric ward of the Mayo Clinic.

Q To your knowledge, was any friend of Hemingway, other than you, allowed to go to the Mayo Clinic?

A I was the only person.

Q Other than Mary Hemingway?

A Mary was there when I got there, but nobody else during the entire two times that Ernest was in the Mayo Clinic was asked to come.

Q Did you ever see Ernest after the visit in the Mayo Clinic?

A I saw him on a second visit to the Mayo Clinic.

Q You went there twice?

A Yes. The second visit was the last time I saw
p. 107 Ernest. He killed himself shortly after they released him the following summer.

Q All of your testimony and other items as to which you haven't testified are contained in the book that you wrote called "Papa Hemingway"?

A That's right.

MR. ROSENMAN: I offer in evidence the Bantam edition of "Papa Hemingway" as Plaintiff's Exhibit 28.

MR. CALLACY: No objection.

Q Mr. Hotchner, did you have correspondence with Hemingway and Mary Hemingway in the course of your friend-
p. 108 ship?

A Yes, I did.

Q What happened to the letters you wrote to Heming-way? Do you have copies of those?

A No, I don't. Mrs. Hemingway told me that they were given to the Kennedy Library in Boston.

Q And do you have letters written to you from Hemingway and Mrs. Hemingway?

A Yes, I have.

Q What was done with the originals of those, sir?

A The bulk of the originals were sold to the
p. 109 University of Virginia Library.

A Along with other Hemingway material you had?

A Yes; along with other material, right.

Q Is that available to the general public?

A No, only to scholars doing research.

Q Did he see any of your works after they were
p. 122 televised or made into a motion picture?

A Yes, several. He saw "For Whom the Bell Tolls" with me because it was on tape and we saw it while traveling

Q Did he say after he saw any of those, that he no longer trusted you to do adaptations?

Q Did you receive any of the money from "The
p. 124 Dangerous Summer" paid by Life magazine?

A No.

Q What were the circumstances under which Ernest Hemingway wrote "The Dangerous Summer" insofar as you were involved?

A When I arrived in Spain in 1959, June 28, he was at work on "The Dangerous Summer." He told me that Life magazine had cabled him in May, asking him whether
p. 125 he would cover -- there was a bullfight rivalry that summer between two great matadors, Dominguin and Ordonez. And Life had cabled him, asking him whether he would do an article about it. He had accepted and this was done prior to my arrival.

Q He told you he had contracted to do it?

A Yes.

Q When did he come to write the articles, the three articles that comprise "The Dangerous Summer"?

A He wrote those after that summer in Cuba.

Q Did the time come when he asked you to do some work on "The Dangerous Summer" for him?

A Yes. He wasn't able to cut the manuscript.

Q And he asked you because you had been there to help out?

A It wasn't just because I had been there, but as a man who had dealt with books and words, he asked me whether as a friend, whether I would come down to Cuba and see whether I could help him excise approximately 90,000 words out of his manuscript.

THE COURT: Life magazine would not have done that?

THE WITNESS: He wouldn't trust Life magazine to do it.

p. 126

Q Did the time come when you were in Madrid the next year, as these articles were being published, that he asked your help with regard to the payment that Life was making for these articles?

A Well, what had happened was that Ernest had contracted for one article for Life magazine. It had grown to a much larger manuscript and by then the arrangement with Life was for three installments. He was already, as I have said before, showing signs of the paranoia that was to eventually lead him to his suicide. He was already having trouble dealing with reality. He asked me whether, when I returned to New York, I would see Ed Thompson, who was a friend of mine, who was the editor of Life magazine, and see whether he wouldn't give Ernest a much larger sum of money for the Life magazine articles.

Q What did you do when you returned?

A I had lunch with Ed Thompson and I said, "This is Ernest's point of view and if you could, that would be great." Thompson sighed and he said, "Well, I suppose, for Ernest Hemingway." But he did, he did directly with Alfred Rice after that.

p. 127

Q You didn't bargain with Thompson?

A I don't think so. I think Rice got something more for the Spanish publication of it, also. I don't remember.

Q Did you ever act as Ernest Hemingway's agent or adviser in business affairs?

A The only time that I got involved at all in his

p. 127 business affairs was the last few months of his life when, as I told you before, he was a very sick man and he was driving himself into distraction over an offer he had received from Twentieth Century Fox, a producer named Jerry Wald. Wald wanted to make a movie out of a number of Hemingway short stories, all about a boy named "Nick Adams." He wanted to buy ten stories. He offered Ernest a sum of money. Ernest wanted a much greater sum of money and he asked me whether I would call Jerry Wald or perhaps Jerry Wald was calling me -- I can't recall exactly who was calling who; it was a very chaotic time -- to see whether he would pay instead of 120- or 125,000, $900,000. It was a ridiculous demand but I wanted to humor Ernest. He was in a terrible state --

THE COURT: Do I understand you did negotiate with Twentieth Century Fox?

A I did try. I made one attempt and I realized

p. 128 that I wasn't an agent, didn't want to be; and I advised Ernest to get a good Hollywood agent, which he did, Irving Lazar, and Lazar then took over the negotiations.

Q Mr. Hotchner, I would like to go through the allegations of the complaint with you.

On page 81 of Plaintiff's Exhibit 1 -- that's the book "Hemingway in Spain" by Puche, appears the following passage:

"This was yet another point of resemblance between Ernesto and Don Pio Baroja, whose intimates, for the most part, were also an irritating bunch of mediocre,

p. 128 coarse, vulgar sycophants."

I ask you whether that statement is true and correct?

MR. CALLAGY: Objection.

THE COURT: Sustained.

Q Were Ernesto's intimates for the most part an irritating bunch of mediocre, coarse, vulgar sychophants?

THE COURT: You see, we are not trying the case of the intimates for the most part. I'll sustain the

p. 129 objection.

THE COURT: Counsel, I will take the entire book but I'm not going to try the issue as to whether other persons who were within the entourage, if that's a proper

p. 131 way to characterize them, have been defamed.

MR. ROSENMAN: I'm not. I am asking whether it's true.

THE COURT: He can testify as to himself, but I'm not going to open this litigation up as to the character or ability or conduct of persons other than Puche and Hotchner. I'll sustain the objection on that ground only.

Q Now reading on page 82, lines 20 to 25:

"The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, people such as Juanito Quintana and even Ordonez.

p. 147 Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite. But he put up a very good front as Ernesto's mild-mannered, obedient servant."

Did you in Pamplona have two-faced behavior toward Ernesto's real friends?

MR. CALLAGY: Objection.

THE COURT: Well, I think we have to identify or define what "two-faced behavior" means to this witness.

Q Do you know what two-faced behavior means?

A That would be to show one face to the individual and another face behind his back.

Q Would that be a hypocrite?

A That would be a hypocrite.

THE COURT: Not necessarily, would it?

THE WITNESS: A hypocrite is anybody who pretends to have feelings that he doesn't have, who is with-

p. 148 out morals, who is a very low person, I would think, in terms of his own truthfulness and honesty.

Q I read to you from Exhibit 41:

"Two faced: having two faces; deceitful; hypocritical."

I ask you whether that summer you were guilty of hypocritical behavior, two-faced behavior toward people who were Ernesto's real friends?

MR. CALLAGY: Objection.

THE COURT: Overruled.

A I was open and aboveboard with everybody, as I always am.

p. 148

Q Were you two-faced toward Juanito Quintana?

A Certainly not.

Q Were you two-faced toward Ordonez?

A Certainly not.

Q Since the summer of '59, have you had occasion to see Ordonez?

A Yes.

Q Do you still remain his friend?

A Yes. And in "The Dangerous Summer," I am described as his friend.

Q Was he your friend?

A We are friends.

Q I am continuing reading from this passage:

p. 149

"Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite."

Were you a hypocrite?

A I did not hide my true feelings and certainly I was not a hypocrite toward anybody.

Q Were you Ernesto's mild-mannered, obedient servant?

A Absolutely not. I was his partner in this revelry, as everybody else was.

Q Were you a close friend?

p. 149

A Indeed.

Q On page 82, lines 30 to 32, plaintiff is described

"Ernesto rather liked Hotchner's funny stories and put up with his drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears."

Did you speak drivel to Ernesto?

A I never spoke -- and I would speak it in English if I spoke it -- I spoke no drivel. That particular week was one in which we all had a good time and if I would bore him to tears, I would soon not be part of the entourage, I can assure you.

Q You spoke no Spanish, did you?

p. 150

A None.

Q Were you obsequious to Ernesto?

A Not at all.

Q Did you bore him to tears?

A As I said, if I had, I wouldn't be part of that group.

Q On page 82, beginning at line 32, you are described

as follows:

"Hotchner did his best all summer long to make the imaginary duel between Ordonez and Dominguin a real one; in moments when Ernesto was tense or had no one around for company, he was half convinced he was witnessing a genuine

p. 151 'civil war' in the bullfight world, though I for my part thought the whole affair was a big laugh, and almost everyone else did too.

"As an expert at grinding out publicity in the United States, Hotchner knew what a big splash Ernesto's articles were going to make, and was already bragging about what a coup they would be."

Was the duel between Ordonez and Dominguin a big laugh?

A It was comparable to the world series in the United States. It was the biggest event that Spain had had in perhaps ten years. It was covered by all the newspapers and magazines. Tickets couldn't be bought. It was comparable to the top athletic event in this country, the superbowl.

Q A championship prize fight?

A Between Mohammed Ali and one of his contenders.

Q Did you see anyone in Spain treating it as a big laugh?

A I certainly did not.

p. 152 Q Is the statement, that you were already bragging about what a coup they would be, true? Did you brag about it?

A I had nothing to do with Ernesto's movement with the mano a mano. That means hand-to-hand bullfighting. It's a rare event when there are two great matadors who can be on a card together. Normally, there are three. This summer, there were two great matadors. Everything I

p. 152 know about this and what I'm telling you now, I learned from Ernest Hemingway. And it was his contract with Life that got him into it. I had nothing to do with it. Everything I knew about this, I learned from Hemingway.

Q You learned all these bullfight terms from Hemingway?

A The few I know, I learned from him.

THE COURT: Except for Mr. Puche, all the people that were there spoke English, isn't that so?

THE WITNESS: Mary Hemingway spoke Spanish.

THE COURT: Not English?

THE WITNESS: Oh, yes. Only English with Hemingway, of course.

Q Still quoting from page -- line 32 on page 82:

"'Freckles' was never open and aboveboard. His mild manner and his air of shy diffidence seemed to me quite a cover-up for his exploitation of Ernesto."

Were you open and aboveboard?

p. 153 A In every way.

Q Was your air one of shy diffidence?

A I think not. We were having a marvelous time and we were all enjoying it.

Q Was it a cover-up for your exploitation of Ernesto?

A I couldn't conceivably be exploiting Ernest. We were all having a good time at a bullfight. There wasn't anything to exploit.

Q On page 161 you are described:

p. 153 "Then he dropped" --

MR. CALLAGY: Objection to the "you are described.

THE COURT: I will overrule the objection, assuming he is reading what I suspect he is reading.

Q "Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he's a very smart cookie.'

'I can see that he's very fond of you; I replied." The "I" there is Puche.

"Then, a little while later, he'd whispered," -- that's Ernesto -- "'I don't really trust him, though.'"

Did Ernesto ever say to you that he considered you a very smart cookie?

A That Ernest would use the word "precious" about

p. 154 me is absolutely laughable. "Precious" to me connotes somebody who is a little dear, who is a little sweet. I mean, it's an absolute outrage that the word is used. He couldn't have used any of those words. They had nothing to do with our relation, with how we enjoyed each other, our friendship, either at that time, before or after. Those words are absolutely invented. They are lies.

Q What about the Ernesto whispering, "I don't really trust him, though"?

A I have described to you that Pamplona was a bedlam, like New Year's Eve. You couldn't whisper to anybody
p. 154 and Ernest was not a man who whispered to anybody. If Ernest Hemingway didn't trust me, I wouldn't be there two minutes. Hemingway's line was always the way to find out if anybody is trustworthy, to trust them, and if that failed, get rid of them. That happened many times during the course of our friendship, but I can assure you that one thing that existed between us was trust, absolute.

Q The passage continues:

"But all this was merely the opening scene in the opera buffa. Next came the enthusiastic chorus of girl students who kept pretending they were innocent young things. Ernesto said to me: 'Where do you suppose their
p. 159 maidenheads went?'"

Did you ever hear Ernesto say words like that?

MR. CALLAGY: Objection.

THE COURT: Overruled.

A Absolutely made up. Never said anything like that.

THE COURT: Never said such a thing in your presence?

THE WITNESS: In my presence, yes.

Q In your opinion and based on your knowledge of Ernesto, would he have made this kind of statement to Puche?

A Never. Absolutely alien to his character and nature.

Q Was his speech coarse?

A No. He used coarse words at times, but his

speech, his general attitude in language was one of politeness.

p. 160

p. 169 Q Page 196:

"'Freckles' was in complete control of the situation, and I wasn't at all surprised that he had earned lots of money for Ernesto by signing him up with the television networks and mass-circulation American magazines, though I was quite certain Hotchner had been motivated by something other than worshipful admiration for a great writer."

p.170

With the exception of the original Cosmopolitan article in 1948 that you have mentioned, did you ever sign him up for any mass-circulation American magazines?

A I did not.

Q Did you ever sign him up with television networks?

A I did not.

Q Going on to page 203:

"And the two or three times that Ernesto tried to explain to me why the duel between Dominguin and Ordonez was so important, the whole thing left me rather cold. I didn't really understand what all the fuss was about. They had managed to kindle some sort of fire that 'dangerous summer,' but I never felt warmed by it. But 'Freckles' was delighted at the thought of how much money they were going to make, what with all the talk of a great rivalry between the two matadors."

Did you make any money from the articles on "The

Dangerous Summer"?

A If that's what he is talking about, I certainly did not, nor could I have made it from anything else. I had nothing to do with the articles from "The Dangerous Summer."

p. 171

Q Reading now from page 318:

"Only a woman like Mary could have put up with those two ridiculous figures who hung around Ernesto every minute: Davis the jealous watchdog of his fame and fortune and Hotchner the exploiter of his reputation. Only Mary knew that Ernesto's real riches were intangible, and therefore she allowed him and Davis and Hotchner to do as they pleased."

Were you a ridiculous figure?

MR. CALLAGY: Objection.

THE COURT: In his opinion, he can say.

MR. CALLAGY: Counsel left off the rest of that paragraph.

THE COURT: Which part did he leave off? You can read the balance of the paragraph.

MR. CALLAGY: "It is possible that his two American friends may have sincerely thought they were looking after his interests and protecting him."

Q Were you a ridiculous figure?

A I certainly was not, and what's more, Mary couldn't

p. 172

have been around protecting him. She broke her toe and wasn't around very much. She was back in her room.

Q I'm reading from page 320, line 12. This is Puche speaking:

"'What about Freckles? What would you do without him?'

p. 172 "And Hotchner flashed 'Papa' a sly smile, playing the game with him along with the rest of them. Ernesto looked Antonio up and down and said, 'You are right -- what would I do without Freckles? But if he is unhappy working for me, you can sign him up as one of your assistants. Maybe he's just now discovering his true real vocation -- he's thinking of running with the bulls, you know, and maybe he will turn out to be a serious rival of yours some day.'

'We'll try him out, shall we?'"

Did you ever hear that conversation between Puche and Hemingway?

A Would you read the first sentence?

Q "'What about Freckles? What would you do without him?'"

A Who says that?

Q Puche.

p. 173 A How in the world could I understand it? He must have said it in Spanish.

THE COURT: Don't give argument.

A I didn't hear it. If he said it, it was in Spanish and I wouldn't flash a sly smile or anything else.

MR. CALLAGY: Objection, your Honor. The passage clearly states the conversation was between Hemingway and Antonio.

THE COURT: I have to review this and see if that's a valid objection or not.

I think, judging from the second line there, Mr. Callagy, that Puche was present because he said, "I

p. 173 remembered one of their typical conversations," and I gather from that that's a fair inference that what follows and what counsel read was something which took place in Puche's presence and which he remembered.

MR. CALLAGY: That's right, your Honor, but the conversation, if you will look at the fifth line, says, "Antonio remarked to Ernesto."

THE COURT: All right.

MR. CALLAGY: If you go down further, "Ernesto looked Antonio up and down and said,"so it was the conversation --

THE COURT: I think the objection is well taken. As I understand this page, this author Puche says he was

p. 174 there and remembers this conversation. He may be asked whether such a conversation took place between himself and Antonio and Ernest Hemingway in the presence of Puche.

MR. CALLAGY: That was my only point. The conversation was between Hemingway and Ordonez.

THE COURT: In the presence of Puche.

THE WITNESS: But am I right?

THE COURT: No. Please don't.

A I can't understand the question.

THE COURT: What he is asking you is: Did this conversation take place between Hemingway, yourself and Antonio in the presence of Puche?

p. 174 MR. CALLAGY: Objection. It doesn't say it took place in the presence of the plaintiff.

THE COURT: It says:

"And Hotchner flashed 'Papa' a sly smile, playing the game with him along with the rest of them."

So in order to flash a sly smile, you would have to be present, wouldn't you?

MR. CALLAGY: But not necessarily part of the conversation.

THE COURT: Well, that's arguable to the jury. If he didn't hear the conversation, how could he know

p. 175 whether to smile.

Frame another question, please. I don't want to get involved in this. It's a fact question.

Q Were you present when Puche had a conversation with Ernesto and Antonio, which I read before, in which you flashed "Papa" a sly smile, playing the game with him along with the rest of them?

A No such conversation took place in my presence. It's a lie.

Q You have already testified Puche wasn't in Pamplona except on one occasion.

A Except as I would tell in relation to this article that he wrote.

THE COURT: In other words, Antonio never said these words in your presence.

THE WITNESS: Certainly not in words intelligible

p. 175 to me.

THE COURT: Did Mr. Hemingway speak Spanish?

THE WITNESS: Yes.

Q On page 324, line 26, Plaintiff's Exhibit 1 says:

"Ernesto sometimes used to leave the door of his room open, so that Hotchner, his financial adviser, and Davis, his major-domo and bodyguard, could come and go as they pleased."

Were you his financial adviser?

A Certainly not.

Q Was Davis his major-domo and bodyguard?

p. 176 A Not at all.

Q On page 325, line 10, the book says:

"Davis was an enormous help to him in preparing his text, and Hotchner was always close at hand to help him settle urgent business in the States."

Did Davis ever help Hemingway prepare his text?

A Impossible. Hemingway prepared his own text. Davis wasn't a writer anyway.

THE COURT: What was Davis' capacity?

THE WITNESS: He was just a friend. He was somebody who drove the car. He was the host of the Hemingways. They stayed at his house. He was a companion.

THE COURT: Was he retired from some business?

THE WITNESS: Yes, he had retired.

Q Hadn't Davis lived in Spain for many years?

p. 176 A Yes, 20-odd years.

Q He owned a large estate in -- near Malaga in southern Spain?

A Malaga is in the south of Spain and Bill Davis

p. 177 owned a beautiful, enormous house there and the Hemingways and I were guests in that house for the entire summer. We would go back and forth to it when we went to the bull-fights.

Q On Plaintiff's Exhibit 30, Item 3, the Lane translation --

THE COURT: What is it you are offering to show?

MR. ROSENMAN: I am going to quote the underlying words that are different from the book itself in the Lane translation.

MR. CALLAGY: He can't ask this witness about it, your Honor.

MR. CALLAGY: The only thing that's on trial is

p. 178 "Hemingway in Spain." That's the only thing you may ask this witness about.

THE COURT: I may take anything in the Lane translation as being a basis for notice to Doubleday that they were on notice that there might possibly be some inaccuracies in the book. It may be a basis for imputing negligence to them. If they read the Lane translation carefully they were placed on notice to check into some of these facts.

Is it really true, these things are untrue that don't concern him at all?

MR. ROSENMAN: Which?

p. 178

THE COURT: Davis and the like?

MR. ROSENMAN: When I get to the book, I will show you terrible examples of misstatements of fact. They go to credibility.

THE COURT: I will overrule the objection. I will give a cautionary instruction to the jury.

(In open court.)

p. 179

THE COURT: I am overruling the objection. However, I will give the jury a cautionary instruction at this time.

I want you to keep separate in your minds the questions about what's in the English language book, which you are all reading, which is the type of questioning we have been having this afternoon, and questions about what are in the Lane translation and evidence about the Lane translation is taken subject to connection, and at the end of the case I'll make a ruling as to whether you can consider it at all and if so, under what circumstances you can consider it, but they did not publish the Lane translation as such. What they published was the book, and you must bear in mind, be very careful to keep separate in your minds that which is said about plaintiff in the Lane translation and that which is said about him, if it is, in the book. So please try to keep separate in your minds any questions about the Lane translation.

I'm going to ask you, counsel, not to go back
p. 179 and forth between the one and the other. I don't want the jury to get confused over what's in the Lane translation
p. 180 with what's in the book. Are you finished with the book?

p. 181 Q When and where was the picture taken?

A We were sitting at the Bar Choko in the main square of Pamplona. By "we," I mean Hemingway, Valerie and myself. In the background is a man who, since the publication of this book, I have been told is Puche.

Q Were you introduced to him on that occasion?

A Not then or any other time.

Q Did Hemingway talk to many people in Pamplona during the fiesta?

A Yes, we would be sitting at a table like this and
p. 182 people would be all around. Especially if they had cameras. There were journalists, all manner of people. Students. It was a very milling, complicated situation. And we would sit at our table and largely disregard the people who were around. Sometimes Ernest would respond. He might give an autograph, whatever. But one wasn't aware of these hordes of people who were in the background, at least I wasn't.

Q And lots of them came up to speak to Ernesto?

A Yes, of course.

Q Did he introduce you to most of them?

A To none of them. I mean virtually none of them unless it was an old friend of his.

Q In all the time you were in Pamplona, did Puche ever have a breakfast, a lunch or a dinner with Hemingway and his entourage?

A In my presence?

Q In your presence.

p. 182

A No.

Q Were there any meals that you missed?

A Yes, there was one day when I did not go on a picnic to the Irati River. We went four times to the Irati to have picnics and then come back to the bullfight, except for once. On one of those occasions, I did not go.

THE COURT: You see, this plaintiff is not

p. 184

aggrieved by any expression of opinion on the part of Puche concerning the character or the words or the life of Hemingway. He is only aggrieved here, as I see it, on two things. He has been accused of possessing bad traits of character, being a toady; and it's also been said, by implication I suppose, that he misrepresented to the public the nature of his knowledge or the closeness of his association with Hemingway and his entourage. Those are the only things I see in this book that give Mr. Hotchner any cause for grievance.

p. 185

I don't want to try the case of Davis and I certainly don't want to try the case of whether Hemingway was maligned by the author. I consider it irrelevant.

Perhaps I could take a limited amount of proof to the effect that Puche wasn't there when he said he was, if you could bring that evidence home to Doubleday on the theory they knew or should have known, and it might well be that some of this evidence can be brought home to Doubleday, that they knew or should have known the book was false.

As far as this author's viewpoint concerning Hemingway's character, I think that's totally irrelevant to this trial.

Q Mr. Hotchner, turning to the Lane translation which we mentioned earlier --

p. 187

THE COURT: Now you have left the book with this witness?

MR. ROSENMAN: Yes, for the moment, your Honor.

THE COURT: Members of the jury, these questions are being asked with reference to the Lane translation.

Q I quote from Item 3 on page 142:

"'Freckles' never looked you straight in the eye; he was never open and aboveboard with you, and I always felt there was something sneaky about him. His mild manner and his air of shy diffidence were quite a clever coverup for his sly, underhanded exploitation of Ernesto."

In Pamplona and elsewhere, did you fail to look people straight in the eye?

A I certainly did not.

Q Did you ever see Puche, to look him straight in the eye?

A I never saw Puche.

Q Did you ever fail to be open and aboveboard with any person in Spain on that occasion?

A In my opinion, no.

Q Were you never open and aboveboard with Puche?

A I never saw Puche.

Q Was there something sneaky about you?

p. 188

A I have never been sneaky in my life.

Q Were you ever guilty of sly, underhanded exploitation of Ernesto?

A No.

Q Now, quoting from the Lane translation, Item 4

p. 188 on page 308. This is a quotation from Hemingway. I will read the whole thing so you will get the context:

"Then he"-- that's Hemingway -- "dropped the subject of Davis and started in on Hotchner:

'He's a little precious, but he's a very smart cookie.'

'I can see he is very fond of you,' I replied.

"Then a little while later:

'I don't really trust him though.'"

Puche: "'But I've heard you say he is very useful to you.'"

Hemingway: "'Yes, that's true, but he is dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him.'"

Was that statement by Hemingway ever made to you?

A Absolutely not.

Q Was it ever made in your presence by Hemingway

p. 189 to anybody else?

A Never.

Q Were you dirty?

A No, I bathe regularly.

Q Are you a terrible ass-licker?

A It's not in my nature.

Q Did you ever hear Ernest express to anybody the thought he wouldn't sleep in the same room with you?

A No, he never said such a thing.

p. 189

Q Turning now to Item 5 in the Lane translation on page 348:

"At one point, Ernesto turned to me and whispered in my ear," "my" being Puche:

"'Hotchner is a good friend of mine, but he is something of a rascal.'

"I thought Ernesto was just kidding and meant" and then the rest of the phrase is crossed out, and Puche says:

"'Yes, it's quite obvious he is an awful clever fellow.'"

Hemingway: "Yes, he is terribly intelligent, but he is also out for number one. He has never done me dirt, but he is one of the sort of persons you have to keep your eye on every minute."

p. 190

Did Ernest ever call you "a rascal"?

A Never, and it's not his kind of word anyway.

Q Did Ernest ever say to you, "He has never done me" -- speaking about you -- "He has never done me dirt, but he is the sort of person you have to keep your eye on every minute"?

A Ernest trusted me implicitly with everything out of his sight in another country. It's a preposterous lie.

MR. ROSENMAN: Your Honor, am I going to be allowed to question him about the Purczinski translation?

THE COURT: Only as to specific words that are defamatory.

MR. ROSENMAN: That's all.

p. 190

THE COURT: Where the Lane translation is not there.

MR. ROSENMAN: Right, your Honor.

MR. CALLAGY: Note my objection.

THE COURT: Yes, sir.

Q On Item 6 where the page -- this is on page 244-5, the Lane translation is missing, not available.

"The most worried and cautious member of the group was still 'Freckles,' with his gaze which was a cross between voluptuous and cornered animal, of a lynx with the

p. 191

outward appearance of a holdup man."

To your knowledge, is your gaze a cross between voluptuous and cornered animal?

A That would be for others to say. I wouldn't describe myself as that, no.

Q Are you a lynx? A lynx is a large bobcat.

A Well, it's a predator.

Q Yes.

A I think not.

Q Do you have the outward appearance of a holdup man?

A No, nor his inclinations.

Q "who," I am continuing reading, "who laughed, applauded, made a note of things, who sang, but who in spite of this yielding to camaraderie, at various times could be seen to be completely in his own world. Although he had elevated himself almost to the status of a kind of public relations chief of Ernesto's, what he looked most like was the leader of one of the New York or Chicago gangs."

p. 191 Do you consider that you look like the leader of one of the New York or Chicago gangs?

A I don't think the Mafia would elect me to anything, no.

THE COURT: It isn't necessarily to be assumed

p. 192 that the leaders of the New York or Chicago gangs are necessarily the Mafia.

THE WITNESS: Nor any satellite group.

THE COURT: Let's go on, please.

Q The last one is Item 8 on page 438, where again the Lane translation is missing:

"The others were dressing for dinner. The first to arrive was Hotchner, with his mocking face of the congenial gutter-rat, as Ernesto said. The fact that he did not speak Spanish constituted a certain self-defense and for that reason he was given more leeway."

Do you believe that your face is mocking?

A I don't think it mocks anybody.

Q Did Ernesto every say it was?

A No. He comments about my face in "The Dangerous Summer." As I recall, he calls it "a rugged, honest face." That's his description of this summer and my face.

Q Were you acting like a congenial gutter-rat?

A Not a congenial or an uncongenial gutter-rat.

Q Did Ernest ever indicate he thought you had a face of a congenial gutter-rat?

A No, he didn't.

p. 195

Q Mr. Hotchner, I would now like to turn to a question of damages, the damage to you by Plaintiff's Exhibit 1.

Would you tell me what the effect of the publication of this book has been on you in the trade of your profession as a writer and biographer?

A Well, in the first place, in the group of people with whom I associate in New York, editors, publishers, writers, et cetera, it has held me up to a certain amount of ridicule and has painted me in a totally false light. These people were aware of the reviews, more than the book, and it has led to poking fun at me as a result of it, but it is a humiliating experience and has been for me. Especially at the time the book came out and the reviews came out and at gatherings where a couple of people picked up these words like toady or the gypsy expression and the rest of it, it was a matter that I tried to take good-naturedly but I found the entire thing a debilitating experience.

It's gone beyond that. In terms of my reputation, it's been especially painful. I have spent a lifetime at writing and building up a certain amount of trust and confidence. I have also had a very long friendship with this man that I cherish --

p. 196

Q Which man?

A Hemingway. And in both respects I have suffered quite a bit. I was recently in Pittsburgh in connection with the Doris Day book which I authored and I was on one of those radio programs in which people phone in and ask

p. 196

you questions. One of the calls came in from a student at the University of Pittsburgh --

MR. CALLAGY: Objection. Hearsay.

THE COURT: Overruled. He is saying that it happened to him. It is not taken for the truth of whatever the student said but merely the fact that the student said it.

This is on some regular station?

THE WITNESS: Pittsburgh radio station.

THE COURT: Could you identify it?

THE WITNESS: I'm sorry, your Honor, I don't remember the call letters. When we go out on these things, we go out for 3 or 4 days and tour a lot of television and radio stations.

THE COURT: All right, let's finish.

A The student said that he and others in his class were in seminar on Hemmingway and that he had read my book and other Hemingway materials and he had taken from the library the book "Hemingway in Spain" and he said, "It seems

p. 197

that you were not that kind of a friend with Hemingway at all. He didn't even trust you so how are we to believe what's in 'Papa Hemingway,' this man who was with you all summer, he claims," and he mentioned a couple of things.

THE COURT: This happened on the air?

THE WITNESS: This was on the air. The call goes out all over Pittsburgh and there I am having to defend myself on the air against a student who has a right to know and what do you say, the man is a liar, the man wasn't there?

p. 197 Here is a book published by Doubleday, which is a big firm. I happen to know they have over 700 titles, $100 million a year. They published a book. This man has a right to accept it as truth. I have no way to defend myself.

I tell you, after that night I felt absolutely terrible. There is no way on the air that you can do anything but say, well, it's a lie, or the man did not know me. You cannot defend yourself. This book is in print. It goes into circulation, it goes in the libraries and university students, who I care a great deal about, read it primarily. It becomes more than a popular book. It becomes a scholastic book and I have no way to defend myself against this. I cannot write a book that says

p. 198 Puche was not in Spain or Puche was not with me. And so that's the first item.

Secondly, I have found that for the first time in my life I cannot deal with Hemingway materials. I have been so upset by this book, I have a contract with NBC to do a television special of "Papa Hemingway" and over the course of the last nine months I just have not been able to do it. I just don't feel the same about dealing with the Hemingway materials.

I know this may seem unusual to those who don't write but Ernest used to say, "A writer writes with delicate equipment." I don't know what it is that makes a writer sit at a typewriter and put something on a piece of paper but I can tell you anything that interferes with

p. 198 it, the man does it, like this man did, in a vicious way, deserves everything we can do to him. I have not been able to do that and it's upset me. I haven't delivered the manuscript. I cannot seem to do it.

p. 202 THE WITNESS: May I finish my answer about the damage.

R. ROSENMAN: Yes, sir.

A Certainly the people who know you well at a time like this are going to stand by you and not believe what is said. George Plimpton, a good friend, will accept that as being something less than the truth, that is, these things.

I'm concerned about the people who do not know me. I'm concerned about the people who would be readers and who are the critics, who are the people who are going to affect what I do in the future. 300 of these books went out to influential critics across the country. I have no way to know what that may do in the mind of a critic in the future who may believe either or not what I write. The next book I write may be something that calls for their belief in my honesty, in the fact that I can be relied upon and that I am not a hypocrite or underhanded or all of these things that I am alleged to be. It's of vital interest to me that this be combated and corrected.

p. 203 Q In terms of the publication of Plaintiff's Exhibit 1, were you retained by Doris Day to work with her on her book before or after the publication?

A Of this book?

Q Yes.

A Long before and the manuscript was finished by the time this book came out.

p. 203

THE COURT: The Day the manuscript was finisned by the time this book was publ shed?

THE WITNESS: Yes, the first draft of it was done virtually. Excuse me, at the time I bec me aware of this book, it was finished.

THE COURT: As I understand it, you published your Day book in 1976.

THE WITNESS: It was in the book stores in November '75.

THE COURT: Go ahead.

Q Since the publication of this book, have you been approached by anybody to work with them as a biographer?

A Nobody.

p. 204

Q What is the effect of the --

A That's not true. I did get two ludicrous offers that aren't even worthy of mention. Some minor actresses, a Russian actress who came over, but nobody that I would consider to merit a book about them.

Q What do you consider the effect of this book is on your employment in the future in motion pictures and television?

A I have no way to know. This is the unseen enemy. You don't know what happens when this goes out into the world. It exists.

Q Would the same answer be true of the fact that you have given many lectures in the past?

A Yes. And in the last year -- I didn't lecture for a while because I was working on books. So the offers came in and I turned them down. But this past year when I would have, I didn't get one lecture. Now, how much of

p. 204 that was effected by this, I don't know. There is no way to measure. Nobody calls up and says we don't want you to lecture because we read about you in this book. It doesn't happen like that in the world.

Q The last statement you made is also true of motion pictures and television?

A It's true of all your employment. The negatives

p. 205 are certainly not brought to your attention. If somebody decides not to employ you for a motion picture, they don't call up and tell you that.

Davis-direct

p. 258 Q You were described as "Annie Davis" in "Papa Hemingway," Plaintiff's Exhibit 28?

A Oh, I'm described as "Annie Davis" in "Papa Hemingway." I don't -- yes, I guess I am in that book.

Q Are you married to Nathan Davis?

A Yes.

Q And is he called "Bill Davis" as well?

A Yes.

Q How long have you lived in Spain, Mrs. Davis?

A Well, about 20 some years.

Q I am having trouble hearing you. Would you talk a little louder?

A About 20 some years. Let me think. Over 20 years.

Q Do you speak, read and write Spanish?

A Yes, I do.

p. 258

Q When did you first meet Hemingway?

A We were in Paris and my husband got in touch with him and that's when I met him; 1949 I think it was.

Q In 1949 did you meet the plaintiff, A. E. Hotchner as well?

A Both together at the races.

p. 260

Q When did you first meet, if you remember, Jose Luis Castillo-Puche, the author of the Plaintiff's Exhibit 1?

A Me? I don't remember that I exactly met him. I went to Ernest and Mary's suite. We were all at the Hotel Suecia in Madrid and we used to gather in a sort of salon for going out to lunch; and there, there were two

p. 261

reporters, I thought they were. They were sort of journalists. One of them was -- and I was told their names: Castillo-Puche -- probably Bill told me -- and Gomez, somebody Gomez.

Q G-o-m-e-z?

A G-o-m-e-z; but I think he had a double name, too.

Q On how many occasions did you see him in Madrid?

A I just saw him that time in Ernest's room.

Q When you went out to lunch, did he join you?

A No.

Q At that time who was the group with Mr. and Mrs. Hemingway?

A At the Suecia at that time? Well, there was Ernest and Mary and Bill and me and Hotch and -- at that time that's all. That's all.

p. 261 Q All right. And thereafter, the group went to Pamplona, didn't they, for the festival?

A Oh, absolutely, they did. But I'm thinking perhaps that Dr. George Saviers and his wife had already arrived in Madrid because I remember we all went in a cavalcade to Pamplona. Yes, they had arrived.

Q Now, would you tell the jury on what occasions you saw Puche in Pamplona with Hemingway and the other members of the Hemingway group?

p. 262 A Well, I just saw him once at the bar where we used to meet--it's called the "Bar Choko"--and then around the square. Just one time.

Q Was that an evening, later in the afternoon?

A It was after the bullfight.

Q So that was very late afternoon?

A Late afternoon.

Q And what was he doing?

A I think he was just sitting at the cafe table and walking around a bit sometimes in the square.

Q Did he greet you or did you greet him?

A He spoke to me. I think everybody else had gone by then, and I was going to go home to Mary, you see, because she couldn't come to all these things.

p. 262 Q Can you remember what you and Puche said to each other or anything else that occurred on that one meeting at the Bar Choko?

p. 263 A I really can't. It couldn't have been much of a conversation because I don't remember --

MR. CALLAGY: Objection.

THE COURT: She can say she doesn't remember. The answer will stand.

Q While you were in Pamplona, did Puche ever have breakfast with the members of the Hemingway group and Hemingway?

P. 263

A Not that I remember at all, no.

Q Did he ever have lunch?

A No.

Q Did he ever have dinner?

A No. It was just our group.

Q Now, on the evening you remember seeing him at the Choko, he didn't join you for dinner that night?

A No.

Q Now, in the book he describes a picnic at the Irati River. Were you at all of the picnics at the Irati River?

A I was at all the picnics because I brought the picnics.

Q I can't hear you.

A I was at all the picnics because I brought the picnics because Mary was not able to do it.

Q You were responsible for buying and bringing the picnic?

p. 264

THE COURT: I am sorry. A nodding of the head doesn't appear in my record.

A I am sorry.

Yes, I was.

Q Did you ever go to bullfights with Puche?

A No. I never saw him at the bullfight in Pamplona.

Q On the occasion you saw him at the Choko, did you see Ernest Hemingway there with him?

A I can't say yes or no, unequivocally, on that question because everybody was milling around all the time. As far as I remember, he was just alone. The group had moved away.

p. 264

Q Choko Bar was very crowded?

A Very crowded, very noisy, very confusing. It was every man for himself, really, there.

Q I didn't hear you.

A It was every man for himself there.

Q Isn't it in the center of Pamplona in terms of the people being there?

A It's the center of all the Pamplona feria at that square.

Q There are thousands of people milling around there?

p. 265

A Absolutely.

Q Did many people come up to Hemingway and speak to him in the course of the week at Pamplona?

A At the Choko he was always surrounded.

Q People asking for autographs?

A Yes, that.

Q People wanting to tell him how much they liked his books?

A Yes.

Q People wanted to tell him that had met him somewhere before?

A Yes.

Q Were the people who came up to talk to Ernesto, Mr. Hemingway, were they introduced to all of the members of the Hemingway group?

A Oh, it would be impossible. No, they were not.

Q It would be impossible for him to do so?

A Impossible.

Q Now, after you left Pamplona, did you ever see Puche for the rest of the summer?

p. 265 A I cannot remember seeing Puche for the rest of the summer.

Q After you left Pamplona, did the Hemingway group go to Madrid as described in the Gaceta article, which is

p. 266 Plaintiff's Exhibit --

MR. HAUSER: 34.

MR. CALLAGY: Objection.

THE COURT: I will sustain the objection. There is no showing the lady read the article.

Q Have you read the article in Gaceta Illustrada by Mr. Puche published August 8, 1969?

A I read it then.

Q I show you Plaintiff's Exhibit 34 and ask you whether you have seen that.

A Oh, yes. I have seen that. I have, yes. Do you want me to read it?

Q No, I don't. Thank you.

Q In Exhibit 35, which is a translation of the Gaceta article, Mr. Puche says on page 13:

"The last day of the fiesta, like always, Pamplona was beginning to fall down and finally the 'marvelous nightmare of the fiesta' ended. Ernesto threw everything that was left into the last day, and he still had enough energy to say:

'On to Madrid.'

"We saw each other again in the Hotel'Suecia,' his last refuge."

Is that statement true?

p. 267

MR. CALLAGY: Objection.

THE COURT: If she knows.

A We didn't go straight to Madrid. We went to Burgos. It's on the way to Madrid. It's quite a distance. We got there for lunch.

Q Was that your birthday?

A Yes.

Q You had a birthday party in Burgos?

A They threw a surprise party.

Q Was Mr. Puche there?

A No.

Q Was Mr. Puche there to the best of your recollection on the last day of the Pamplona festival?

A I have no recollection of seeing him.

Q Later that summer at your house in Spain, was a 60 birthday party given by Mary Hemingway for Ernest Hemingway?

A It was.

Q Very elaborate party, wasn't it?

A Beautiful party.

Q Was Mr. Puche there?

A Mr. Puche was not there.

Q Was Mr. Hotchner there?

A Mr. Hotchner was certainly there.

p. 271

Q What was the relationship between Hotchner and Hemingway as you observed it in the summer of 1959?

A They were the best, the warmest, most affectionate friends, comrade in arms, everything.

p. 274

Q I am sorry, am I wrong about 1960? Yes, 1960.

A It is 1960.

Q What was the relationship between Hemingway and Hotchner at that time?

A Extremely close.

p. 275

Q Would you describe them as "pals"?

A Very much so. The best of friends.

Q Did you ever hear Ernest say anything about Hotchner, his admiration for Hotchner?

A Yes. He often expressed his admiration for Hotch, his exuberance and his trustworthiness. You know, we hardly could get along without him, really.

Q Did you ever hear Hemingway describe Hotchner as a member of his socios?

A Yes.

Q What does "socios" mean?

A It means partners, sort of, or members of a club. It's a Spanish word. You could be a member of a club or you could be partners, but I think they meant it like they were all partners.

Q Who were the other members of the socios?

A Ernest, Antonio Ordonez and Hotch and Bill.

Q "Bill," being Bill Davis?

A Yes.

Q And this socios was used for the first time in the summer of 1959?

A To the best of my knowledge.

Q At your house in Malaga?

A Yes, I think they just made it up then and there.

p. 276 Q Was Hotchner solicitous of Hemingway's welfare?

A He was.

Q Was Hemingway solicitous of Hotchner's welfare?

A He was.

Q Did they seem to admire each other's abilities?

A Intensely.

p. 278 Q Excluding you and Mr. Davis, was Ernesto surrounded with an entourage of riff-raff?

A He was not surrounded by an entourage of riff-raff.

p. 279 Q "He had many very respectable friends, but was also surrounded by many hangers-on, a whole raft of toadies whom he couldn't do without but nevertheless secretly despised."

Excluding you and Mr. Davis, did you ever see Ernest surrounded by many hangers-on, a whole raft of toadies whom he couldn't do without but nevertheless secretly despised?

MR. CALLAGY: Objection.

THE COURT: Overruled.

A Positively no. That's just poisonous to --

THE COURT: Just answer the questions, please. Don't make a speech.

A No, absolutely not.

Q Was Mr. Hotchner a toady to Mr. Hemingway?

A Absolutely not.

Q Was Mr. Hotchner riff-raff?

A No.

Q Is he a coarse, vulgar sycophant?

A No.

p. 279

MR. CALLAGY: Objection.

THE COURT: Overruled.

Q Continuing to read from the complaint:

"It was Ordonez, as I remember, who first called

p. 280 him 'Freckles,' and the nickname stuck."

Were you present in Malaga at your home when Mr. Hotchner first received that nickname?

MR. CALLAGY: Objection.

THE COURT: If she knows.

A Yes.

Q And before that time, he wasn't called "El Pechas"?

A He got that name -- they were thinking up names because he was going to be in a bullfight, but he wasn't really going to fight.

Q And Mr. Puche wasn't present then?

A Oh, no.

THE COURT: When was this that this use of the name "Freckles" was first discussed in your presence?

THE WITNESS: Well, it was before they went to the bullfight at Ciudad Real. I should think it would be August, I think.

THE COURT: Of what year?

THE WITNESS: 1959.

Q Again quoting from Paragraph 9(a) of the complaint, I'm quoting from the book, Plaintiff's Exhibit 1, "Hemingway in Spain."

"He" --

p. 281 Q Quoting from Plaintiff's Exhibit 1 on page 82:

"He" -- that's Freckles -- "pretended not to mind and was good-natured about everything, but he was such a toady at times that it was sickening."

Was Hotchner a toady to Hemingway?

A No.

Q On page 82 of Exhibit 1:

p. 282 "The thing I disliked most about Hotchner was his two-faced behavior toward people who were Ernesto's real friends, people such as Juanito Quintana and even Ordonez. Though he was very clever at hiding his true feelings, you could tell that Hotchner was really a hypocrite."

Did you ever see Hotchner behave as a hypocrite to any member of the Hemingway group that summer?

A No, I did not.

Q Did you ever see him behave as a hypocrite toward Juanito Quintana?

A No. I can enlarge on that.

THE COURT: Don't enlarge. Just answer the question.

A No.

Q Toward Antonio Ordonez?

A No.

Q On page 82, the book states:

"Ernesto rather liked Hotchner's funny stories and put up with his drivel, but at times his obsequiousness got on Ernesto's nerves and bored him to tears."

Did you ever hear Hotchner talk drivel?

A No.

Q Did you ever hear Ernesto say that Hotchner was

p. 283 talking drivel?

A Absolutely not; never.

Q Did you ever see him behave in a --

MR. CALLAGY: Objection. This is opinion.

THE COURT: This is this witness' opinion and she says she was there and she can be cross-examined on it. Objection overruled.

Q Did you ever see Hotchner behave in an obsequious manner toward Ernesto?

A No.

Q Did you ever hear Ernesto complain that Hotchner was obsequious to him?

A No.

p. 284 Q On page 161 of Plaintiff's Exhibit 1, the author says:

"Then he dropped the subject of Davis and started in on Hotchner: 'He's a little precious, but he is a very smart cookie.'"

Did you ever hear Ernesto say that sentence to Puche?

A I didn't hear him say such a sentence to Puche.

Q Did you ever hear him utter that sentence or similar sentiments to anybody else?

A No.

Q Was it in keeping with the character of the relationship between Hotchner and Hemingway as you observed it that summer?

A It was not in keeping.

p. 284 Q I am continuing reading that quotation:

"'I can see he's very fond of you,' I" -- being Puche -- "replied.

"Then a little while later, he'd" -- that's Hemingway --"whispered, 'I don't really trust him, though.'"

Did you ever hear Hemingway say to Puche or anybody else, "I don't really trust Hotchner"?

A It would be impossible. No, I never did. It

p. 285 would be impossible that he would have said that.

Q I'm going to read you some quotations from the Lane translation of Plaintiff's Exhibit 1 as marked in Exhibit 30. On page 142 of the Lane translation:

"'Freckles' never looked you straight in the eye; he was never open and aboveboard with you, and I always felt there was something sneaky about him. His mild manner and his air of shy diffidence were quite a clever coverup for his sly, underhanded exploitation of Ernesto."

Did you ever observe Freckles not to look you, Hemingway or any other member of the group straight in the eye?

A No.

MR. CALLAGY: Objection, irrelevant.

THE COURT: I am taking it under the false light theory. I adhere to the same ruling.

Q Did you ever observe him to be not open and aboveboard with any of the members of the Hemingway group?

A No.

p. 285 Q Did you ever see him behave in a sneaky manner toward any member of the Hemingway group?

A No.

Q Did you ever find him guilty of sly, underhanded

p. 286 exploitation of Ernesto?

A No.

Q On page 308 of the Lane translation, Mr. Puche has Mr. Hemingway saying to him:

"'Yes, that's true, but he's dirty and a terrible ass-licker. There's something phoney about him. I wouldn't sleep in the same room with him.'"

Did you ever hear Ernest Hemingway make a remark like that about Mr. Hotchner?

A No.

MR. CALLAGY: Same objection.

THE COURT: Overruled.

Q To Mr. Puche or anybody else?

A No.

Q On page 343 of the Lane translation, he has Hemingway say to him, Mr. Puche speaking of Mr. Hotchner:

"He's never done me dirt, but he's the sort of person you have to keep your eye on every minute."

Did you ever hear Mr. Hemingway make that remark to Puche or anybody else?

MR. CALLAGY: Objection.

A I did not.

Q And lastly, on this translation, this translation is now -- it's Item 2 of the Purczinski -- no, I will skip

p. 287 that, your Honor.

THE COURT: Yes.

Q Did you in all the time you knew Mary Hemingway, ever hear her say anything bad or unkind about Hotch?

A No; on the contrary.

Q What did she say?

A Well, when he was going to be coming to Pamplona and we were driving out, she was very excited and pleased that Hotch was going to be getting there.

Q What did she tell you about her feelings about Hotchner?

A She equally was affectionate when she spoke of him and had known him a long time, and was affectionate and loving about him. He really gave a lot to --

Q Did she indicate in any way that she didn't trust him?

A Far from it. My goodness. She wrote an article herself at some point that summer and asked his help to get it into a certain magazine. She trusted him absolutely.

Q I beg your pardon?

A She trusted him absolutely.

Q You saw no reservation toward him in her attitude all summer?

A No. I would say she would appeal to him for help

p. 288 rather than talk against him.

Q When problems came up in the course of the summer, she turned to him for help?

A Absolutely.

p. 288 Q You say that you were introduced to Mr. Castillo, the author of Hemingway in Spain, when you were in Madrid prior to going to Pamplona?

A I don't remember being introduced to him. He was in the room when I came into Mr. Hemingway's suite because we were all going to go out to lunch, and he

p. 289 and a man called "Gomez something" were there and it was generally, you know, the rest of us. I don't remember being actually introduced.

Q Who told you who he was?

A Well, because I think that Ernest and Bill and Hotch remarked, you know, talked about them a bit. Then I had seen Castillo-Puche's --

Q I just want to focus in on the first meeting in Madrid. Who told you at that time who Castillo was?

A Well, maybe I was introduced; but I mean, I can't say that I would remember the actual introduction or who did it. Perhaps Mary did it, perhaps Hotch did it, perhaps whoever did it, I don't know. But his name and Gomez, Louis Gomez? Two interviewers.

p. 290 Q Were you with Ernest Hemingway every minute that you were in Pamplona?

A I couldn't be with him every minute, no. I was not with him every minute.

Q Were there ever occasions when you didn't sit next to him at a meal?

A Oh, of course there were.

Q Did you go to the bullfight with Ernest Hemingway?

A In Pamplona, the tickets had not been gotten in time. The tickets were spread -- I didn't sit with him in Pamplona. I think probably he didn't sit with the ticket. He was in the callejon.

p. 291

Q He went to the bullfight?

A Certainly.

Q Did he have a lot of Spanish friends?

A He did.

Q Did you see him talking to the Spanish friends when he was in Pamplona?

A Well, at the bar. He had so many people talking.

Q He talked to a lot of people?

A There was always people, Spanish and everybody else.

Q You described the Choko Bar scene as, I believe, "hundreds of people milling around"?

A It was pretty chaotic after the bullfights.

p. 293

Q Mrs. Davis, I show you another photograph and marked Defendant's Exhibit F for identification.

I ask you: Do you recognize that photograph?

A I recognize it, indeed.

Q Have you ever seen the photograph before today?

A I have seen it before today.

p. 294

Q Where did you see it?

A I can't think where I have seen it, but it seems to me I have seen it. Well, I have seen it in his book. Wasn't it?

Q Castillo's book, yes. Who is featured in this photograph?

A Ernest.

Q Who else?

A Bill and Castillo-Puche.

Q Bill is your husband, Bill Davis?

A Yes.

p. 294

Q And Castillo is the author?

A Yes, that looks like one of those early morning things. I only went to the running of the bulls once.

THE COURT: Attorneys shouldn't stand between the witness and the jury.

Q You say you only went to the running of the bulls once?

A Yes.

Q Your husband, featu[illegible] in this picture, did he know Castillo?

A He knew him like just a person around.

THE COURT: Please speak up nice and loud, Mrs. Davis.

p. 295

A Yes, he knew him. You know, if I have to answer yes or no, yes.

Q Did your husband see Castillo more than you did?

A He probably did if they went around. At the times I was in bed, they would be going around Pamplona -- well, like everybody does, rushing around the streets, and then they look at the running of the bulls.

Q You weren't there then?

A I wasn't there every night. I just did that once. Mary, you know, I mean we were older than some of these people. We didn't rush around every night.

Q So that your husband --

A My husband --

Q Your husband rushed around with Castillo and with Hemingway?

A He was always with Ernest.

p. 308

Q Mrs. Davis, did you ever observe Ernest Hemingway and Antonio Ordonez speaking together?

A Yes.

Q On many occasions?

A Yes.

Q Did you ever observe Ernest Hemingway and Quintana, Juanito Quintana, speaking together?

A Yes, yes.

Q On many occasions?

A In the Bar Choko, yes.

Q Were you a party to -- always a party to these conversations?

A No.

Q How about the conversations with Ordonez? Were you a party to those?

A Not always.

p. 309

Q Did you ever observe Ernest Hemingway and Mr. Castillo speaking together?

A Not particularly but, you know, in a public place like a bar, you aren't all the time observing them. There is a great many around. Then I saw him, as I said, in the room -- at this Hotel Suecia.

Q Did you on that day see him speaking with Ernest Hemingway?

A Just generally speaking, everybody was speaking.

Q No, I am saying, did you observe Mr. Castillo on that occasion speaking to Ernest Hemingway?

A I observed him speaking to Mr. Hemingway and to Mrs. Hemingway and to everybody else.

p. 318

Q Would you briefly tell the jury about your educational background, briefly?

A I graduated from Northwestern University and I did graduate work toward a Ph.D. at Cornell University.

Q And would you give the jury a resume of the jobs held by you, say since 1968, eight years ago?

THE COURT: What was the Ph.D. candidacy that you were working on, in what field?

THE WITNESS: Economics.

THE COURT: Please answer counsel's last question.

A In '68 I was deputy director of the Commission on Campaign Costs. I worked for two other foundation jobs after that, Alfred P. Sloan Foundation. It was a commission on cable television.

p. 319

Q Would you keep your voice up a little, please. I can't hear you and I'm sure the jurors here can't.

A I worked in the Lindsay administration as a director of courts planning. I was planning for the courts, the district attorneys and Legal Aid. And my most recent job was with the New York County district attorney, where I was chief of the Bureau of Planning and Operations.

p. 321

Q What happened after that in terms of Hemingway and the group surrounding you. Did you join that group?

A Yes. After that, we saw them every day and ate our meals with them. I should say that it was very unusual for--at that time, many years ago, for American girls to be traveling alone, and so we spent a lot of time with them.

p. 322

Q Who were the members of the group?

A Ernest and Mary Hemingway, Hotchner; sometimes Antonio would come with us, Antonio Ordonez; and Annie and Bill Davis and Teddy Jo and myself. There were a number of other people I could name who were not there as frequently as we were.

Q Who were the other people?

A Beverly Bentley, an actress. There was Mr. Buckley and there was Hugh Millet who we called "box man" because he played a guitar. There was Pepi Dominguin who came along sometimes when they weren't fighting a bullfight. But the central group was about eight of us.

Q Did you stay with that group for the next three weeks or so?

A Yes.

Q And that was during the entire time at Pamplona, after the first night?

p. 323

A Yes.

Q And thereafter in Madrid?

A Right.

Q And thereafter in Malaga?

A Right.

Q And thereafter on the bullfights constituting the mano a mano?

A Well, there were -- and then in Valencia, also, yes.

Q After three weeks you and Teddy Jo left the group?

A Right.

Q While you were there, did you have occasion to observe the relationship between Hemingway and Hotch?

p. 323

A Oh, yes.

THE COURT: What was your age in 1959?

THE WITNESS: I was 23; 22, 23. 23.

Q You said you did have a chance to observe the relationship. What was the relationship between Hotch and Hemingway?

A Hemingway absolutely doted on him. I mean, he was the person he was closest to during all that time. All the time I saw them together.

Q What about the relationship between Hotch and

p. 324

Mary Hemingway?

A Oh, very friendly. And a lot of affection.

Q Both ways?

A Oh, sure.

Q Did they seem to have a position of trust, between Hotchner and Hemingway, on a mutual basis?

A Very definitely. In fact, Hemingway was very dependent on him.

Q What was he dependent on him for?

A Well, Hotch's vitality was very important to him; Hotch's energy, I think. I think in some way, Hemingway sort of kept his own energy up by being around -- I know he always wanted Hotch around.

Q Near him?

A Yes.

Q You have looked through Plaintiff's Exhibit 1, "Hemingway in Spain"?

A Yes.

Q And in it you see the pictures of Mr. Puche, the author?

p. 324

A Yes.

Q Did you recognize Mr. Puche from those pictures?

A No.

Q Were you ever introduced to Mr. Puche?

p. 325

A Certainly not, as far as I know.

Q Did you ever speak to him?

A I'm sure not.

Q Did you speak any Spanish?

A None.

Q Did you see him in Pamplona during the festival?

A No.

Q There is a picture of him at the -- supposedly at the Irati River with Hemingway. Did you see him on that occasion?

A There was maybe more than one occasion there with journalists along, but no one I ever spoke to certainly.

Q Were they near you or some distance away up the -- some distance away from the group?

A Well, you know, I remember a photographer being along. I certainly never spoke to him. Whatever they did, they did independently of us.

Q I am going to ask you to comment on whether or not you heard the following conversations which Mr. Puche attributes to Ernest Hemingway. The first is Item 2 in the Purczinski translation --

MR. CALLAGY: Objection.

THE COURT: The objection is to the form. You

p.326 are asking her to comment.

Q Referring to Item 4 of Exhibit 30, Puche quotes Hemingway as saying as to Hotchner --

MR. CALLAGY: Objection, your Honor. The witness testified she speaks no Spanish.

THE COURT: Well, I understand that, but I believe she can be asked whether she ever heard Hemingway say any of those things with relation to Hotchner. I assume that's the line of inquiry.

MR. ROSENMAN: Yes, your Honor.

THE COURT: Can't you all agree she didn't. Do we have to hear it all?

MR. ROSENMAN: I am perfectly willing.

Q "'Yes, but he is an ass-licker and dirty and somewhat treacherous. I wouldn't sleep with him in the same room.'"

Did you ever hear Hemingway say those words or words like them to anybody at Pamplona?

A It was inconceivable --

MR. CALLAGY: Objection.

THE COURT: Overruled.

Your answer is: You never heard him say anything like that?

THE WITNESS: No.

p. 327 Q Did you ever hear him say it on any other occasion?

A No.

Q Why did you say it's inconceivable, Miss Schoonmaker?

p. 327

A Because anyone who was there during that summer knew the affection he had for Hotch. He talked about Hotch all the time and said -- I mean, he just adored him. And Hemingway -- the only other assumption would be that Hemingway was two-faced; that he would be telling us all of one thing and saying something else to this other person and that's -- he absolutely was not that sort of person.

Q Was he a very outspoken man, Mr. Hemingway?

A He certainly was, and he certainly always -- there was no question about how he felt about people. He either liked you or didn't, but he certainly didn't --

Q Did you sit next to Hemingway at meals that summer as part of the Hemingway group?

A Always.

Q Can you recall any of the warm remarks he would make about Hotch?

MR. CALLAGY: Objection.

THE COURT: If she can recall any remarks about

p. 328

Mr. Hotchner, and then the jury will decide whether they are warm or not. If she can recall any particular remarks made by Mr. Hemingway concerning Mr. Hotchner and the time and place will have to be established, who was present.

Q Would you try to fix a time and place and who was present?

A For each time?

Q To the best of your ability.

p. 328

A Well, I remember a long conversation we had about qualities in Hotch that Hemingway adored. He liked the fact that he was so athletic and that he was so funny and helpful. I mean, he had such energy. He was always putting together all sorts of projects for us and he was always the one who made all our arrangements and he was very much to be, you know, counted on for that sort of thing.

THE COURT: Hemingway told you this?

THE WITNESS: Yes.

THE COURT: Where was this that he told it to you and who, if you recall, was present?

THE WITNESS: Antonio Ordonez, Teddy Jo Paulson, Mr. Hotchner, Mary Hemingway, Annie Davis, Bill Davis. Beyond that, I don't remember.

p. 329

Q You remember any remark that Hemingway made involving the use of the word "copilot"?

A Yes, that was one thing I did remember. He said, you know, that -- he described Hotch as his "copilot." He described him as his "Indian brother," or he would say, "We are blood brothers."

Q Do you remember any conversation where Hemingway used the word "Prado"?

A Yes. He loved Hotch's looks and that was something he would bring everybody's attention to. He would say, "Doesn't Hotch have a wonderful face," and Hotch is not a handsome man by any means, but pointing out that even his lack of handsomeness was a virtue. He had a wonderful face. He would say the Prado boys should have been here to paint him.

p. 329

Q What did he mean by tha..

A He meant the artists whose paintings were hanging in the Prado, which is the national museum in Spain.

Q The rough equivalent of our National Gallery in Washington?

A Right.

Q You said you speak no Spanish?

A Ten words.

Q And therefore, you say that you never spoke to

p. 330

Puche?

A No. Well, I never spoke to anyone who spoke only Spanish and I understand Puche spoke only Spanish.

Q The book says on page 133:

"...Ernesto had started making advances to them," meaning the kidnap victims, "more or less as a joke, but was quite willing to go further."

Is that true?

A It just couldn't be further from the truth.

MR. CALLAGY: Objection as to relevance.

THE COURT: Overruled.

Q On page 191 it says:

"...the two Yankee girl students were expressing their surprise on being told that there would be no fist-fights or any sort of violence among the huge crowd of youngsters at the fiesta."

Did you express your surprise to Puche or anybody else about that?

A No. I certainly wouldn't have ever thought there would be fistfights anyway, but I certainly didn't ever say anything like that.

p. 330 Q On page 346 Puche says:

"... Ernesto worried constantly about Antonio's little scratch, which required no more than a strip of

p. 331 adhesive tape..."

Was that true?

A Well, I remember Antonio having a wound that required a surgical drain in it. It was sort of --

THE COURT: This is a wound from a bullfight?

THE WITNESS: Yes, from a bull.

Q On page 356, Puche says Ernesto would ask us, meaning the kidnap victims, to scratch both his front and back.

Is that true?

A That never happened.

Q Paragraph 30, which is after page 224, the picture numbered 30 says:

"These two American students were part of a group of girls 'kidnaped' by Ernest during the 'dangerous summer' of 1959, who traveled all over Spain with him and his wife Mary and 'Miss Valerie,' the 'kidnap victim' closest to the Hemingways."

I ask you whether this picture is of you and Teddy Jo Paulson?

A No, it's not.

Q Not of either of you?

A No.

THE COURT: What page are you on?

p. 332 MR. ROSENMAN: I am facing page 225, your Honor. Picture 30, the two girls with berets.

Q So the two girls with Ernest Hemingway are not you and Teddy Jo Paulson, the "kidnap victims"?

A No.

Q After the summer at Pamplona, did you have occasion to spend time with Hemingway and with Hotchner in New York City?

A Yes.

Q On how many occasions approximately?

A And Mary Hemingway.

Q And Mary Hemingway, too.

On how many occasions approximately?

A In New York?

Q Yes.

A Well, it was only a year-and-a-half before Ernest died.

Q Yes.

A I guess I saw them three times. And then I saw Mary many, many times after that.

Q After Hemingway's death?

A Yes.

Q Did you see any change from that warm relationship you described in Ernest Hemingway from the end of

p. 333 Pamplona that summer to the time of his death in his relationship with Hotch?

A No. He became even more devoted to Hotch and more dependent on Hotch.

Q And with Mary Hemingway, as well?

p. 333

A Oh, certainly, no -- in fact, Mary also became very dependent on Hotch during that time. Mary had a tremendous affection for Hotch. They were quite close. Hotch decorated their apartment for them when they were moving in. He would always tend after them very closely whenever they were in New York. When I say he decorated their apartment, he had to go out and buy the furniture and everything that went in the apartment when they rented it.

Q And finally, I'm going to ask you about the Lane translation, page 348, in which Hemingway is quoted as saying about Hotchner:

"Yes, he's terribly intelligent, but he's also out for number one. He's never done me dirt, but he's the sort of person you have to keep your eye on every minute."

Did you ever hear Hemingway say -- make that statement or a statement like it to anybody?

A Absolutely nothing even similar to that.

p. 335

A Certainly within five feet.

Q Did you sit next to him at the bullfights?

A Occasionally.

Q Did you see Mr. Hemingway talk to other people?

A Oh, sure.

Q And did you see Mr. Hemingway and hear Mr. Hemingway talking Spanish?

A Sometimes, yes.

Q Did you see him talk to Mr. Juanito Quintana?

A Sure, yes.

p. 335

Q What language did he speak to him in?

A He spoke Spanish.

Q Did you see him talk to Antonio Ordonez?

A Yes.

Q What language would you see him -- did you hear him speak in?

A Spanish.

Q Did you see Hemingway talk to other people?

A Yes.

Q And did you hear him talk to other Spanish people?

A Yes.

Q What language did they speak in?

A Spanish.

p. 342 THE COURT: Well, I think there has been enough evidence adduced here so it presents a jury question. The Court could not be justified in concluding that there is only one resolution of this controversy which reasonable

p. 343 jurors acting reasonably could make. I don't find evidence that they knew it was false. I think there is evidence from which an inference could be drawn that perhaps they published with reckless disregard as to whether it was true or not. Perhaps there was sufficient time to make an inquiry and perhaps there was sufficient intrinsic in the book, in the Spanish book and in the Lane translation, to place them on notice, requiring a reasonable person to make further inquiry or be guilty of negligence. I think these matters should be left to the jury.

The Court is concerned about that portion of this complaint which -- and I must say that some of this evidence would warrant a conclusion that this book is a total fake.

Furthermore, it isn't just the opinion of the author we are concerned with, but the opinion attributed to Hemingway by the author, which is somewhat different.

The Court is concerned with the question of the claim based on the picture. As far as the claim is based on the picture, I don't believe that there is anything actionable about including a picture of Hemingway and others, including this plaintiff, taken apparently in a public restaurant in Spain; and I believe to the extent it

p. 344 relies on the picture, that second claim should go out.

I think as far as the fictionalization of dialogue is concerned or the false light claims contained in the second cause of action, they are probably actionable or at least present sufficient question for the jury, but I think so much of the second claim as is based on the use of the picture is not actionable and I would withdraw that from the jury.

Is there anything you want to say about that?

MR. ROSENMAN: No, your Honor. I don't take exception to that.

THE COURT: All right. So much of it that depends solely on the use of the picture is dismissed.

AS to whether he has proved damages, I think perhaps there is a basis here for some compensatory damages in view of the totality of the statements, but I must say he hasn't proved he lost any engagements or lost the opportunity to publish anything or was discharged from any employment of a gainful nature or anything like that, but I think the jury could infer that there is a basis for compensatory damages and I add here to my prior ruling, that he is a public figure, at least insofar as the life and affairs of Ernest Hemingway are concerned.

p. 345 K A T H R Y N B. M E D I N A, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CALLAGY:

Q Mrs. Medina, are you employed by the defendant Doubleday?

A Yes, I am.

Q What is your present position?

A I'm a senior editor at Doubleday & Company, Inc.

Q How long have you been employed by Doubleday?

A I have been at Doubleday since 1965.

Q Since '65, what positions have you held?

A I joined Doubleday on an editorial training program in which I worked in various departments of the company including the art department, production department, publicity department and various editorial offices. Then I worked for Sam Vaughan, who was then a senior editor at Doubleday and is now publisher of Doubleday and president

p. 346 of the publishing division. After that, I worked for another senior editor named Lawrence Ashmead, and after that I worked for a third senior editor named Margaret Cousins. I then went to work again for Sam Vaughan, who was again -- who was executive editor at that time doing liaison with the foreign offices of Doubleday. We have offices in San Francisco. At that time, in Washington, in London, and in Paris. And in working on the books.

I was made an associate editor in 1970, an editor in 1973, and a senior editor in 1975.

Q Mrs. Medina, would you tell the jury the functions and the duties of an editor?

p. 346

A Well, the duties of an editor are to acquire books for Doubleday and then to work with the writer, or in the case of a translated book, with the translator, in preparing the book for publication; and then in working with the other departments of the company: With the art department on the jacket; with the production department and the art department on photos --if there are going to be any photos, procuring photo permissions; with the subrights department in seeing that they understand the book and might be able to sell it in their territories. In general, all details relating to the book.

Q Since you have been with Doubleday, for how many

p. 347

books have you served as editor?

A I think, at this point, it's somewhere between 50 and 60 books.

THE COURT: Since what year?

THE WITNESS: Since the time I was made an editor in 1970. I worked on other books before 1970, but I was not the editor of the books.

Q Were you the editor for "Hemingway in Spain"?

A Yes, I was.

Q Plaintiff's Exhibit 1?

A I am the editor.

Q When did you first hear of Mr. Castillo's book?

A We read a column in a literary magazine called the Saturday Review in 1969 and the column was written by a man named Robert Clements who was, and I think still is, head of the comparative literature department at NYU and he wrote a regular column at that time called, I think, "European Literary Scene." In any case, in the column in 1969, he wrote about this book and several others.

p. 347 (Defendant's Exhibit P marked for identification.)

Q Mrs. Medina, is that the Clements' review you were referring to?

A Yes, it is.

p. 348 MR. CALLAGY: I offer it in evidence.

(Defendant's Exhibit P for identification received in evidence.)

THE COURT: Go ahead.

Q What did Mr. Clements say about Mr. Castillo's book?

MR. ROSENMAN: Your Honor, I suggest this is going to last a long time. That article speaks for itself.

THE COURT: If he is asking about the article, it does speak for itself. Any relevant part of the article can be read to the jury.

Q To your knowledge, was Mr. Clements a respected

p. 349 and reliable reviewer?

A Yes, he was.

THE COURT: You can read any part of it you wish to, Mr. Callagy. I did not say you couldn't read it.

(Mr. Callagy read to the jury from Defendant's Exhibit P in evidence.)

Q Mrs. Medina, what happened after this book was called to your attention?

A I wrote to Doubleday's senior editor in Europe, Beverly Gordey, and I asked her if she would get a copy of the book so that we could read it and consider it for Doubleday.

p. 349

Q Did you obtain a copy of the Spanish work?

A She had a copy of the book sent to us.

Q What happened next?

A I then sent the book out to be reviewed by a man named Ernest Pawel. Mr. Pawel is a writer and a critic and had been reading foreign language books for Doubleday since sometime in the 50s. Mr. Pawel, at my request, read the book and wrote a very favorable report, citing the fact that it was -- that the book had a noble honesty.

MR. ROSENMAN: Your Honor, if they are going to offer Mr. Pawel's review, I object to Mrs. Medina describing

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it.

THE COURT: If it's going to be offered, offer it. I will permit the witness to testify she received Ernest Pawel's report and it was favorable to the book.

(Defendant's Exhibits Q and R marked for identification.)

Q Mrs. Medina, is this the report --

THE COURT: There is no objection to it as I understand it.

Q -- that Mr. Pawel prepared?

MR. ROSENMAN: He can put it right in evidence.

THE COURT: It's received in evidence.

(Defendant's Exhibit Q for identification received in evidence.)

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Q Did you also have occasion to have the book reviewed by another reviewer?

A Yes. When I had Mr. Pawel's favorable review, I then sent it to Emile Capouya, who had been an editor at Harper & Row and now is literary editor of "The Nation." He read the book and he also wrote a favorable review.

THE COURT: What was the name of the last gentleman?

THE WITNESS: Mr. E-m-i-l-e C-a-p-o-u-y-a.

Q Is that the report that Mr. Capouya furnished?

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A Yes.

THE COURT: If there is no objection to them, receive them in evidence and read them to the jury.

MR. CALLAGY: Your Honor, I would like to read from the Pawel report.

THE COURT: Fine.

MR. CALLAGY: Defendant's Exhibit Q in evidence.

(Mr. Callagy read to the jury from Defendant's Exhibit Q in evidence.)

MR. CALLAGY: I would like to read from the Pawel report, Exhibit Q in evidence.

THE COURT: That was Capouya you just read?

MR. CALLAGY: That was Pawel I just read. This is Capouya.

THE COURT: What's the number of it?

MR. CALLAGY: R.

THE COURT: Received.

(Defendant's Exhibit R for identification received in evidence.)

p. 351 (Mr. Callagy read to the jury from Defendant's Exhibit R in evidence.)

Q After receiving these reports, Mrs. Medina, what step did Doubleday next take?

A We then negotiated a contract with the Spanish

p. 352 publisher of the book, care of the Spanish agent for the Spanish publisher, and we signed the contract.

Q After you signed the contract with the Spanish publisher, what next happened?

A Well, we then began to look for a translator to translate the book into English and then we signed a letter of agreement with Helen R. Lane.

Q What did you know about Mrs. Lane?

A Mrs. Lane had sent me a resume which, it seemed to me, was very complete and very impressive. She had translated something like 30 books from French, Spanish, Portuguese and Italian and right about that same time, she had been nominated for a national book award in translation, which is a distinguished honor in publishing.

Q Was Mrs. Lane an employee of Doubleday at the time?

A No, she was not an employee of Doubleday.

Q Is this a copy of the list of translations that Mrs. Lane furnished to you?

A Yes, it is.

MR. CALLAGY: I offer that in evidence.

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Q Mrs. Medina, did Doubleday always hire outside translators to prepare translations for publication?

A Yes, we do. We don't employee any translators.

THE COURT: No translators at all in the office?

THE WITNESS: No.

(Defendant's Exhibit S for identification received in evidence.)

Q Did you enter into a contract with Mrs. Lane?

A Yes, we did. We signed a letter of agreement with her.

(Defendant's Exhibits T and U marked for identification.)

MR. ROSENMAN: No objection.

THE COURT: They are both received in evidence.

(Defendant's Exhibits T and U for identification received in evidence.)

MR. ROSENMAN: Is T the resume and --

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MR. CALLAGY: No, S is the resume. U is the letter Mrs. Medina received from Mrs. Lane enclosing the resume.

Q Mrs. Medina, would you describe how Mrs. Lane furnished you with her translation and how long it took?

A She sent me the translation in batches as she finished it and as she had it typed, and she began work toward the end of 1971 and I think completed work at the beginning of 1973.

THE COURT: She was in France at this time?

p. 354 THE WITNESS: In the beginning, she was in the United States, and then she moved to France shortly after we began to work.

MR. CALLAGY: Your Honor, at this point I would like to read to the jury a stipulation as to what Mrs. Lane would testify to --

p. 355 THE COURT: No, finish this witness. You can read the stipulation any time. Finish this witness. Send her about her business and go on to the next witness.

Q Did you read the translation as you received it?

A Yes, I did.

Q Do you read Spanish?

A No, I do not.

Q Did Helen Lane have any problems in making the translation that you were working with her on?

A Yes, she did. She had really two problems:

The first was that the Spanish book contains many quotes from the works of Ernest Hemingway, from the novels and so forth, and it would be absurd to retranslate Hemingway back into English from the Spanish, so she had to locate in Hemingway's own books in English the passages and fit them into the translation of "Hemingway in Spain." She had some trouble finding some of these exact places in Hemingway's own books.

The other problem she had was that the book seemed repetitious and a little long, and she and I agreed that it should be cut.

Q And did Mrs. Lane raise questions about these two points?

A Yes, she did.

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Q Did you respond to the questions?

A Yes, I did.

Q How many times did you read the translation prior to publication?

A I read it once, as I said, as it came in in batches. Then I read it a second time when I had the entire manuscript. Then later, I looked at the copy edited manuscript and at the galleys, but I did not read them all the way through.

Q Did anyone else at Doubleday read the entire manuscript?

A A copy editor would have read the entire manuscript.

Q What does a copy editor look for when he reads a manuscript?

A A copy editor is supposed to check any inconsistencies, any errors in punctuation and grammar, query anything about the manuscript that he thinks should be called to the editor's attention.

Q Who is the copy editor for this book, "Hemingway in Spain"?

A Frank Hoffman was the copy editor.

Q Did Mr. Hoffman report to you any inconsistencies or errors he detected in the manuscript?

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A What he does is he gives me back the manuscript on which he has made any corrections he feels should be made in the manuscript, written any queries he has along the margin.

MR. ROSENMAN: Your Honor, I have been shown a copy of Mr. Hoffman's report. I have been told he is a witness. This is all unnecessary.

p. 357 THE COURT: Well, I'll permit the witness to testify as to the normal fashion in which manuscripts of translated books were handled at Doubleday during those years and if there is any difference between what they did in this book and what they generally do, she may testify to that. I'm sure counsel won't duplicate the testimony of Mr. Hoffman. I don't detect any intention to do that.

Q What did you do with Mr. Hoffman's report?

THE COURT: Was there a report or was this a manuscript with notes on the side of the pages?

A It was a manuscript with notes on the side of the pages, and also notes within the text, typos, and so forth. First I looked it over to look at the typos and the things in the text itself. And then I prepared a memo of the marginal queries.

MR. CALLAGY: The memo has been marked Exhibit V and I offer it in evidence.

p. 358 Q At any time, did Mr. Hoffman call to your attention any inconsistencies or errors regarding Mr. Hotchner?

A No, he did not.

Q Did you ever have reason to suspect that any statements of opinion by Mr. Castillo about Mr. Hotchner were not true or accurate?

A No, I did not.

MR. ROSENMAN: Your Honor, that calls for a conclusion of the witness. I object.

THE COURT: That's her opinion and she is an experienced copy editor -- I'm sorry -- editor. She can testify as to her opinion and you can cross-examine her.

MR. ROSENMAN: All right, sir.

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Q Did Helen Lane ever suggest to you that any of the statements in the book about Mr. Hotchner were or might not be true or accurate?

A No, she did not.

Q Did anyone at any time before publication ever suggest to you that the statements about Mr. Hotchner were not true or accurate?

A No.

Q Prior to publication, did anyone tell you anything inconsistent with the statements about Mr. Hotchner?

A No.

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THE COURT: Inconsistent with what. I don't understand.

MR. CALLAGY: Anything inconsistent with what she may have known or any feeling she may have had.

THE COURT: Did you understand the question?

THE WITNESS: Yes.

Q Were you ever concerned for any reason about any statement in the book about Mr. Hotchner?

A Some of the statements in the book seemed to me uncomplimentary to Mr. Hotchner.

Q Did you have any reason to believe that these uncomplimentary statements were not true or accurate?

A No, I did not, particularly since most of them are opinions of Mr. Castillo.

Q What did you do concerning these statements?

A I sent them to the contracts department at Doubleday, which is the department that handles business and legal matters.

p. 360 Q Mrs. Medina, I show you pages of the translation with the exception of the second set of pages bearing the number 308 and the attachment, and I ask you if those are the pages you sent to the contracts department.

A Yes.

Q What did the contracts department do with regard to the statements you referred to them?

A Mr. Austin, in the contracts department, called me and said that he thought some of the statements should be toned down.

Q Did you follow his suggestion?

A Yes, we discussed it and we discussed the toning down.

Q Referring to those pages, let me ask you: What did you do with the words "self important"?

A I took it out.

p. 361 Q How about the words: "He would turn on you" --

MR. ROSENMAN: Which page is the "self important"?

MR. CALLAGY: Page 141.

Q How about the words: "He would turn on you the instant you let your guard down"? What did you do with that?

A Took it out.

Q How about --

MR. ROSENMAN: Your Honor, I can't find the word "self important." I wish he would refer to which page he is talking about and where on the page it is.

THE COURT: Well, do you have it in front of you, Mrs. Medina?

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THE WITNESS: Yes, page 141, and it's the second long paragraph which begins: "The thing."

MR. ROSENMAN: What is the other one you said?

THE WITNESS: It's the end of that paragraph: "But he would turn on you the instant you let your guard down."

MR. ROSENMAN: Yes, I see that now.

Q How about the words "stupid stories"? What did you do with that?

A Take it out.

THE COURT: Where is that now?

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MR. CALLAGY: 141.

THE COURT: What are the words?

MR. CALLAGY: "Stupid stories."

MR. ROSENMAN: Where is that?

THE WITNESS: The last paragraph on the page.

MR. ROSENMAN: What is under "drivel" is illegible on my copy. Is it illegible on yours?

THE WITNESS: Well, it's penciled in. I have "stupid stories" and -- this is the original manuscript and I took out "stupid stories."

MR. ROSENMAN: Your Honor, I understand there was no original manuscript. All there were were Xerox pages and I was given a Xerox of the Xerox.

THE COURT: The original must be somewhere, gentlemen. We marked Exhibit 5 in the early days of the trial. I'm trying to save suspending everything to go hunt for a missing paper. I'm asking you to make the best you can with the Xeroxes. What the witness is testifying to is that she took out of the Lane translation the words

p. 362 "stupid stories" and you will have a chance to cross-examine to find out where she took it out from and when and whether she did. Is there a difficulty over this?

MR. ROSENMAN: I think there is, your Honor. I was told the original translation had been sent back to

p. 363 Mrs. Lane --

THE COURT: Why don't you save that for cross-examination?

MR. ROSENMAN: I can't even read what she is referring to in my copy, which is supposed to be a copy of what she is holding in her hand.

THE COURT: May I see what you are holding in your hand.

MR. CALLAGY: Your Honor, it's identified in that memorandum from the contracts department.

THE COURT: Why don't you introduce that?

MR. ROSENMAN: I introduced that, your Honor.

THE COURT: All right. Please frame another question.

Q On page 142 of the Lane translation, Mrs. Medina, what did you do with the words "never looked you straight in the eye"?

A Took it out.

Q How about on that same page, the words "something sneaky about him"?

A That was taken out.

Q How about on the same page, the words "sly and underhanded"?

A That was taken out.

p. 364 THE COURT: You did this in order to tone it down so it would be less offensive, is that what you did?

THE WITNESS: That's right.

Q On 308 of the Lane translation, what did you take out?

A "But I've heard you say he's very useful to you," end quote. "Yes."

Q Did you take out the word "dirty"?

A Yes, I did.

Q Did you take out the word "terrible"?

A Yes, I did.

Q Did you take out the words "ass-licker"?

A Yes, I did.

Q Did youtake out the words "something phoney about him"?

A Yes, I did.

Q Did you take out the words, "I wouldn't sleep in the same room with him"?

A Yes, I did.

THE COURT: These are words attributable to Hemingway, is that right?

THE WITNESS: Yes. Well, Hemingway is being quoted in this passage.

THE COURT: And you changed that to quote him to
p. 365 say, "I don't really trust him, though," is that what you did?

THE WITNESS: I cut the passage which begins -- this is what is in:

"Then, a little while later, he'd whispered, 'I don't really trust him, though.'"

Then there were four lines of continuing that dialogue and those four lines were cut.

p. 365

THE COURT: Go ahead.

Q Mrs. Medina, on 348, what did you do with the words "He's never done me dirt"?

A That was taken out.

Q How about the words "He is the sort of person you have to keep your eye on every minute"?

A That was also taken out.

Q Referring to page 196 of the book, do you know whether the words "with his stare which was a cross between a voluptuous and cornered animal, of a lynx with an outward appearance of a hold-up man." Does that appear in the book?

A No.

Q How about these words: "What he looked most like was the leader of one of the New York or Chicago gangs." Does that appear in the book?

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A No, it does not.

Q How about this on page 360 of the book? Did this appear:

"The first to arrive was Hotchner, with his mocking face of the congenial gutter-rat."

Does that appear in the book?

A No.

Q After you toned down these statements or changed them or eliminated them, did you show what you had done to the contracts department?

A Yes, Mr. Austin and I discussed it.

p. 366

Q In any of your discussions with Mr. Austin, did either you or he express a concern that these statements were not true or accurate?

A No. As presented and in context, it's Mr. Castillo's opinion and we never questioned --

Q Did you consider the statements to be true and accurate?

A Yes, I did.

THE COURT: Did you consider it would be Mr. Castillo's opinion or Mr. Hemingway's opinion being quoted by Mr. Castillo?

THE WITNESS: I considered, in both cases, the statements were true.

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Q Why then did you tone them down?

A It seemed unnecessary to offend Mr. Hotchner, who was really a minor character in this book.

Q Did you explain to Mr. Castillo what you had done with regard to the statements about Mr. Hotchner?

A Yes, I did. I wrote to Mr. Castillo and said that, having discussed this with Mr. Austin, that we felt the statements about Mr. Hotchner should be toned down.

Q And what was his response?

A His response was to write me and say that he had no interest in offending Mr. Hotchner; that he confirmed that in his opinion the statements were true, but he agreed that we should tone them down for the American publication.

Q Did anything in Mr. Castillo's response suggest to you that the statements, either as they were originally translated or as they were to appear in the book, were not true or accurate?

p. 367 A No, on the contrary, he confirmed them.

Q Do you now have any reason to doubt the truth or accuracy of the statements relating to Mr. Hotchner?

THE COURT: You mean now, today?

MR. CALLAGY: Today.

MR. ROSENMAN: Your Honor, I don't think that's relevant. I object.

p. 368 THE COURT: Sustained.

Q Before the book was published by Doubleday, what did you know about Mr. Castillo?

A I knew that he was a professional writer. He was a journalist. That he had written a number of books that had been published in Spain, but none of which had been published in the United States. And he had told me that a number of his works had been anthologized in the United States text books and that there were people in New York who were writing theses on his work. I also knew that he had -- well, that's enough.

Q Did you receive a list of the writings of Mr. Castillo from him?

A Yes, I did.

p. 370 Q Mrs. Medina, did you receive a letter from Mr. Castillo in which he described some of his writings and literary projects?

A Yes.

MR. CALLAGY: I offer as Defendant's Exhibit X
p. 371 in evidence a letter dated June 8, '73.

p. 371

Q Aside from this lawsuit has anyone, since the publication of the book, complained or suggested to you that the statements relating to Mr. Hotchner are not true or accurate?

A No.

p. 372

MR. ROSENMAN: Your Honor, I object to that.

THE COURT: I suppose it's irrelevant. I will let her answer.

Q Mrs. Medina, after you had prepared the memorandum containing the copy editor's questions, did you furnish that to Mrs. Lane?

A Yes, I did.

(Defendant's Exhibit Y marked for identification.)

Q Did Mrs. Lane respond to your memorandum?

A Yes, she did.

MR. CALLAGY: I offer Mrs. Lane's response.

MR. ROSENMAN: No objection.

THE COURT: Received in evidence.

(Defendant's Exhibit Y for identification received in evidence.)

Q Mrs. Medina, did you have any reason to believe that Mr. Castillo had personally observed Hotchner in the company of Hemingway?

MR. ROSENMAN: Your Honor, I object.

THE COURT: The objection is for failure to fix a time?

MR. ROSENMAN: Any time at all.

p.373

THE COURT: Well, I'll take it, fixing the time at or prior to the date of publication of this Exhibit 1.

Q That's what we are talking about, prior to publication of Doubleday's book.

THE COURT: Reframe it.

Q Prior to the publication of Doubleday's book, did you have any reason to believe that Mr. Castillo had personally observed Hotchner in the company of Hemingway?

A There are a number of photographs in the book of Mr. Castillo with Hemingway, and in one of the pictures Mr. Hotchner is present.

Q Did you have any reason to believe that Mr. Castillo was a friend of Hemingway and that Hemingway had occasion to speak to Mr. Castillo?

A Well, there are the photographs of them together in the book at different times in different years in different places. There is a letter from Hemingway to Mr. Castillo which appears in our book and which appeared in the Spanish book. In the Spanish book there were other photographs of them together which we did not include in our book. There was a cable from Hemingway to Mr. Castillo and, in addition, there were the stories in the book of their experiences together in Spain, so I had reason to think that --

p.374

Q If I showed all these photographs to you, would you recognize them?

A Yes.

THE COURT: What you are saying is you are familiar with all of the photographs in the Spanish book and in the American book, both?

THE WITNESS: I believe I am.

p.374 Q Mrs. Medina, how many copies of the Doubleday book were sold to date?

MR. ROSENMAN: Your Honor, that's been stipulated.

THE COURT: That's repetitious.

Q Was the book successful in terms of sale?

MR. ROSENMAN: I object.

THE COURT: Sustained. The number of copies is a matter of record in this trial. The jury is entitled to know that. It's in Court's Exhibit 1.

Q Did any of the original readers mention Mr. Hotchner in their reports to Doubleday?

MR. ROSENMAN: I object. The reports speak for themselves. They are in evidence.

THE COURT: Which original readers are we talking about? Pawel and Capouya? If the question is addressed to Pawel and Capouya, I sustain the objection.

Q Did Helen Lane ever mention Mr. Hotchner to you?

A No, she did not.

p.375 Q Was Mr. Hotchner's name ever featured or mentioned in any of the promotional material used in connection with the book?

A No.

MR. ROSENMAN: Your Honor, it seems to me he can offer the promotional material.

THE COURT: It hasn't been said that it was, you see, and, that no party to a lawsuit has to prove a negative like that, but he is entitled to ask the question and I will overrule the objection. But in the absence of evidence to the contrary, there is no showing it was used in promotional material.

You can answer, Mrs. Medina.

A It was not.

p. 375 Q And Mrs. Medina, was promotional material prepared in connection with the publication, distribution and sale of the book?

A Surely.

MR. ROSENMAN: Your Honor, I object to that. We have raised no question of that. It's irrelevant.

THE COURT: Does it mention Hotchner in any way?

MR. ROSENMAN: What he showed me doesn't mention Hotchner in any way.

p. 376 THE COURT: I'll look at it.

MR. CALLAGY: Can I approach the bench on that?

THE COURT: Either now or in a few minutes. I will take a look at the papers first.

(Defendant's Exhibit Z marked for identification.)

THE COURT: Go ahead, Mr. Callagy.

Q Mrs. Medina, did you or anyone at Doubleday know that Mr. Hotchner was mentioned in the book when you decided to acquire the rights?

A No.

Q Did Mr. Hotchner's picture appear in the book?

A Yes.

MR. ROSENMAN: I object.

THE COURT: I think we have had it a couple of times over again: his picture is in the book.

MR. ROSENMAN: And your Honor has already struck so much of the second cause of action.

THE COURT: That's not a matter with which this jury is concerned at all. The jury will disregard counsel's remarks.

p. 376 Q Mrs. Medina, is Mr. Hotchner a major character in the book?

A No, he is not.

p. 377 Q On approximately how many pages is his name mentioned?

A I think he is mentioned possibly ten or at the most 15 pages.

Q Out of how many? Do you remember how long the book was?

A I think it's 388.

MR. ROSENMAN: Your Honor, I think the book speaks for itself.

THE COURT: It does, but different people might come up with different counts. If she has actually counted it, which I must tell you I have done, she can tell us her count.

MR. ROSENMAN: The pagination, I will accept.

THE WITNESS: The pagination is 388.

THE COURT: Seventeen different pages, aren't there? Anything I say is not evidence.

Q Mrs. Medina, was "Hemingway in Spain" reviewed?

A Yes, it was. It was quite widely reviewed.

Q Do you recall approximately how many reviews there were?

A I would not be able to say exactly how many, but I think there were between 40 and 50, at least.

Q Do you recall --

p. 378

THE COURT: I am inclined to accept Exhibit Z in evidence. I think it's admissible on this record. That's their title information sheet.

(Defendant's Exhibit Z for identification received in evidence.)

Q Do you recall any of the reviews criticizing "Hemingway in Spain" as to matters of fact?

A No, I don't.

MR. ROSENMAN: Your Honor, I object.

THE COURT: I'll overrule the objection.

Q Mrs. Medina, you testified that there are approximately 50 reviews.

I show you Defendant's Exhibits K and L and ask you if you are familiar with those reviews of the book.

A Yes.

MR. CALLAGY: I would like to offer those.

MR. ROSENMAN: Your Honor, I would like to object to these reviews.

THE COURT: Do they mention Mr. Hotchner?

MR. ROSENMAN: No, sir.

THE COURT: I'll rule on it later.

Q Finally, Mrs. Medina, of any reviews you testified about, do you recall how many mentioned Mr. Hotchner?

p. 379

A I think there were two reviews that mentioned Mr. Hotchner.

MR. CALLAGY: No further questions.

MR. ROSENMAN: I have no questions of Mrs. Medina.

THE COURT: Mrs. Medina, you are excused.

p. 379

I will ask the jury to step out also for a few minutes. We will take a ten-minute break for the jurors while I discuss these other matters.

(Witness excused.)

(Jury excused.)

THE COURT: I am somewhat puzzled as to the basis for admitting book reviews from the Sun Press Enterprise of Riverside, California, and the Sun Advocate of Baton Rouge, Louisiana, assuming, as I gather I must, without having read them, that they don't mention Hotchner. If they are relevant and a necessary part of the trial record, nothing prevents the plaintiff coming in on rebuttal with 199 others.

MR. CALLAGY: They do mention Mr. Hotchner.

THE COURT: I thought you said they did not.

MR. CALLAGY: I didn't say that.

THE COURT: I beg your pardon.

Well, if they mention Mr. Hotchner, on your representation that it does, I'll take it. I don't understand the ground of the objection if it does.

p. 380

MR. ROSENMAN: Your Honor, I don't think it has any probative value at all.

THE COURT: All right, I'll adhere to my ruling.

(Defendant's Exhibits K and L for identification received in evidence.)

p. 380

FRANK HOFFMAN, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CALLAGY:

Q Mr. Hoffman, are you employed by the defendant Doubleday?

A Yes, I am.

Q In what capacity?

A I'm a copy editor.

Q Will you describe the duties of a copy editor?

A Primarily, it's to make sure there are no grammatical errors in the manuscript. Secondarily, any other errors that I can check, errors of fact, logic; anything that can

p. 381

be checked in our reference library, which is right in the company premises. I'm also supposed to look for anything that could possibly get Doubleday in trouble; for instance, libelous statements. And if I see anything like that, I'm to report it to the editor.

Q On how many books have you served as copy editor?

A Upwards of a hundred.

THE COURT: Do you work in your own home or in the office of Doubleday?

THE WITNESS: I work in the office of Doubleday, your Honor.

THE COURT: How did you prepare to undertake this type of work?

THE WITNESS: Well, mostly just doing much reading; I didn't -- I never took a copy-editing course or anything like that. I had done much proofreading in the past.

p. 381

Q Mr. Hoffman, were you the copy editor for "Hemingway in Spain"?

A Yes, I was.

Q Does Exhibit V summarize the questions that you raised following your review of "Hemingway in Spain"?

A Yes, it does.

Q How many times did you read "Hemingway in Spain"?

A Twice.

p. 382

Q In that connection, do you recall any statements about the plaintiff, Mr. Hotchner?

A I recall that there were statements about Mr. Hotchner, but I don't recall any specific ones.

Q Do you recall making any note about statements about Mr. Hotchner?

A No, I do not.

Q Do you have any reason to believe that any statements about Mr. Hotchner in the Doubleday book are untrue?

A No, I do not.

MR. ROSENMAN: Your Honor, I object.

THE COURT: I sustain the objection unless the question is limited to his state of mind or knowledge in the summer of 1974 or whenever he completed his work -- whenever he finished his assignment.

Q You heard the Judge's statement --

THE COURT: After you prepared that memorandum, you did nothing further with the book, is that right?

THE WITNESS: No, the book was returned to me after my notes on it were looked over by the editor and I made sure that my questions had been answered before sending it on.

p. 383

THE COURT: Reframe the question.

Q Did you ever find any inconsistencies about statements concerning Mr. Hotchner?

A No.

MR. ROSENMAN: I object, your Honor. He said inconsistencies in statements. Is that inconsistencies in statements within the book itself?

THE COURT: Did you find anything inconsistent in the book itself concerning Mr. Hotchner?

THE WITNESS: If I had, I would have noted that in the margin and I don't see any notes here about Mr. Hotchner, so I guess I didn't.

Q At the time you read the translation, the first time and the second time, did you have any reason to believe that the statements about Mr. Hotchner were inaccurate?

A No, I did not.

MR. ROSENMAN: Objection.

THE COURT: I will sustain it as to the form of that question.

Did he believe all those statements were true; not, whether he has basis for it.

Q Mr. Hoffman, did you believe the statements about Mr. Hotchner were true?

p. 384

A I can only say I had no reason not to believe them.

B I L L  A U S T I N, called as a witness by the defendant, being first duly sworn, testified as follows:

p. 385

DIRECT EXAMINATION

BY MR. CALLAGY:

Q What is your present occupation?

A I'm currently a student in the Fordham Law School and I work for Metropolitan Life.

Q Can you give me a brief run down on your educational background?

A Well, I graduated from Cornell University in 1963. I was in the Marines for three years. Following that, I worked for Travelers Insurance for about eight months, nine months. Following that, I worked for Doubleday for two years. While at Doubleday, I got some credits toward my master's in business at night school and I am currently in my second year of law school at Fordham Law School.

Q While you were employed by Doubleday, what capacity, what position did you hold?

p. 386

A I was the assistant contracts manager.

Q Can you describe the duties and responsibilities of the contracts department?

A Contracts department was concerned basically with authors' contracts; questions of permissions, authors' permissions; copyright matters. We acted as a liaison, more or less, between Doubleday and outside counsel. And there were some general business functions that we took care of.

Q Was your department the department responsible for ascertaining whether material was suitable for publication?

p. 386

A Well, the way the system worked, if there was any question about it, it was sent to us to take a look at and then sometimes we tried to take care of it on our own and at other times we would send it to outside counsel.

Q When you sent it to outside counsel, can you tell me what happened usually?

A We would send either the whole manuscript or the relevant pages to outside counsel. They would write a letter on it, an opinion letter, that would start out with some general statements about the book and the subject matter and the law, and they would then zero in on specific statements that they might have -- that they might want to

p. 387

draw to our attention; and we would then get back to the editor and the editor would get together with the author, and usually the author and us and outside counsel would go over the manuscript until our questions were answered. We looked for stuff like substantiation. We tried to check sources, et cetera.

THE COURT: What do you mean by "checking sources"?

THE WITNESS: Well, sir, if there was a direct statement about somebody having an allegation, maybe a remark about somebody being arrested, or something like that, we would try to back that up with some sort of secondary source, or some sort of substantiation to see if it was in fact true.

THE COURT: Did you want to say something?

MR. ROSENMAN. No, your Honor.

Q On occasion, did you review material yourself rather than send it to outside counsel?

p. 387

A Yes, sir, we did. What would happen, if the material was not that -- we didn't think there was that much of a problem with it, we would try to take care of it outselves, tone it down or ask for the necessary substantiation.

p. 388

Q Were you asked to review certain material that appeared in"Hemingway in Spain," the Doubleday book?

A Yes, sir.

Q Do you recall what happened in that instance?

A I don't recall exactly, but I'm sure it went to my boss first and then he referred it to me. I was shown some pages with some remarks on them. I read them over three or four or five times and thought about them for a while. Then I called Mrs. Medina, the editor, and we discussed them. We tried -- I tried to tell her that it should be toned down and she agreed. Then she got a hold of the author and finally got back to me and the suggestions I had made were done.

MR. ROSENMAN: Your Honor, these answers aren't being responsive.

THE COURT: Perhaps they are not.

Frame the next question, please.

Q Mr. Austin, why did you suggest toning down or eliminating statements that you had seen --

THE COURT: You are talking about "Hemingway in Spain"?

MR. CALLAGY: Yes.

MR. ROSENMAN: Your Honor, I object. His memorandum put in evidence really speaks for itself.

p. 389 THE COURT: I'm not certain whether he made any suggestions which are not in this memorandum. If so, counsel can bring it out. Objection overruled.

THE WITNESS: What was the question?

THE COURT: Frame another question.

Q After you had reviewed the material--you say you reviewed it five or six times --my question is: Why did you recommend to Mrs. Medina that certain statements be toned down or eliminated?

A I thought that some of them were somewhat uncomplimentary and it was my job to be as careful as I could about them.

Q Do you know whether Mrs. Medina ever toned down or eliminated the statements?

A Yes, sir, she did.

Q How do you know that?

A After we had talked and I had written her a memo on the subject, she got back to me. As I said, she contacted the author and we went over the statements in question again and they were toned down. They were toned down.

Q Were all these statements that you were referring to, were they about Mr. Hotchner?

A Yes, sir, they were.

p. 390 Q Did you at the time you reviewed these statements have any reason to suspect that any of them were untrue?

A No, I didn't. They were more or less opinion-type statements and I had no reason to believe that they were untrue at all.

THE COURT: Whose opinion?

THE WITNESS: I thought they were the author's opinion.

p. 390

THE COURT: You didn't think they were represented as being Hemingway's opinion of the plaintiff in this case?

THE WITNESS: Some of them, I believe, were represented as being Hemingway's opinion; but I viewed the whole thing more as the opinion of the author.

Q Finally, Mr. Austin, since the date of your review, has anything come to light to cause you to change your opinion as to the truth of the statements about Mr. Hotchner?

A No, sir.

MR. ROSENMAN: Objection, your Honor.

THE COURT: You see, I don't understand the purpose of any inquiry after the date of publication.

MR. CALLAGY: I will withdraw it, your Honor. No further questions.

THE COURT: He can testify as to any information he possessed up to the day the book was released to the public.

p. 391

Q As far as any information, did you have any information prior to publication, with respect to the truth or falsity of the statements about Mr. Hotchner?

A No, sir.

Q You had no reason to suspect that the statements were false?

A No, sir.

MR. CALLAGY: No further questions.

THE COURT: Any cross-examination?

MR. ROSENMAN: Not much, your Honor.

CROSS-EXAMINATION

BY MR. ROSENMAN:

p. 391

Q At the time you wrote your memorandum to Kate Austin on July 17 --

THE COURT: You mean the memorandum to Mrs. Medina?

Q -- to Mrs. Medina, you were not a lawyer, were you?

A No.

Q You weren't attending law school at that time?

A No, sir.

Q It's subsequent that you began to attend law school?

A Yes, sir.

p. 392

Q Did you, when you received the pages, read them and wrote the memorandum, ever do any checking on your own with any of the persons who had been in Spain with Hemingway, described in Plaintiff's Exhibit 1?

A No, sir, I didn't.

Q Did you recommend to Mrs. Medina that she do any?

A I recommended -- I don't know if I recommended, but we certainly agreed that the author should be contacted about these statements he made.

Q And asked what authority he had for them?

A I don't remember exact -- I can't answer that. I would assume that we did talk about the author's opinion and toning it down a little bit.

THE COURT: You keep telling me about the author's opinion; but as I understand it, some of these provisions quoted Hemingway as giving Hemingway's opinion, like, "I don't really trust him." Was that a subject of your discussion?

p. 392

THE WITNESS: Yes, sir, it was.

THE COURT: Hemingway said he was a sharp customer and he was out for number one.

THE WITNESS: My intent here was to make the -- what I thought were the more uncomplimentary passages -- tone them down a little bit. That was my job at the time, to try to prevent any problems for Doubleday.

p. 393

Q Mr. Austin, if you had no reason to doubt the truth of any of these statements, why did you say in your memorandum to Kate Medina: "To make matters worse, I doubt whether any of these statements can be substantiated in any way"?

A What I meant was that they are more or less statements of opinion. They are the author's reporting of the subject and there is really no facts that we could check to substantiate the truth of the statements.

Q Well, he said about Mr. Hotchner, "two-faced behavior." Couldn't you say to Mr. Puche, "Give us another person who was witness to this two-faced behavior"?

A Well, sir, I suppose you could.

Q That wasn't done?

A I don't know if it was or not.

Q "A self-important hypocrite." Did you think Mr. Puche was the only one in the world who had that opinion of Mr. Hotchner?

A I don't know other people's opinion of Mr. Hotchner.

Q Why did you think it couldn't be substantiated in any way?

A Because I thought it was his opinion.

p. 394

THE COURT: His opinion being whose opinion? I must say I'm getting confused as to whose opinion you think these statements are.

THE WITNESS: Well, sir, as I remember, the transcript that I read had both statements of the author and of his report of what Mr. Hemingway had said.

THE COURT: There were some direct statements of things that Mr. Hemingway had said about Hotchner. Isn't that so?

THE WITNESS: Yes, sir, there were.

MR. CALLAGY: Yo r Honor, could I ask that the witness be given his memorandum?

THE COURT: Yes.

MR. CALLAGY: This is your memorandum to Mrs. Medina of July 17, '73 (Handing).

Q Surely the quotations in your memorandum: "He would turn on you the instant you let your guard down" shown on page 141, that was a Hemingway statement made to Puche, wasn't it?

A I don't have the -- if you say so, sir, but I don't have the thing in front of me.

THE COURT: Show him his memorandum, please.

MR. HAUSER: He has it.

MR. CALLAGY: Show him the pages.

p. 395

MR. ROSENMAN: I was starting on the one on top, on page 141, your Honor: "He would turn on you the instant you let your guard down." This is the page of the original translation. I have marked it in red on my copy.

I am sorry. I withdraw that question. That is not a quotation from Ernest Hemingway.

p. 395 Q Here is a quotation from Ernest Hemingway on Galley 141:

"He is as faithful as a bird dog, but I don't trust anybody, you know that. I did once and the guy jumped into bed with me," changed to "tried to hop into bed with me."

That's an Ernest Hemingway quotation, isn't it?

A Yes, sir.

Q Couldn't that be verified with Mrs. Hemingway or any of the other people who knew Hemingway?

A Well, sir, I don't think that the guy here that you are referring to refers in any way to Mr. Hotchner, from reading what you just showed me.

Q Doesn't later on, he say, he doesn't trust Mr. Hotchner?

A Well, sir, without the manuscript, I can't -- okay. I can't really answer your question without looking at what you are trying to point out to me.

p. 396 Q Let me show you on page 308, Hemingway saying:

"Yes, that's true, but he is dirty and a terrible ass-licker. There is something phoney about him. I wouldn't always sleep in the same room with him."

Couldn't that be verified if you had no reason to doubt Mr. Puche's veracity with Mary Hemingway or any of the other people who knew Ernest Hemingway during his lifetime?

A Well, sir, it was my opinion that, first of all, Mr. Hemingway was dead and it would be very hard to really substantiate this. And secondly, that's the sort of thing that it was my job to look out for and we took that out.

p. 396 Q But you didn't do anything about: "To make matters worse, I doubt whether any of these statements can be substantiated in any way." Why didn't you try to substantiate them? Then you could have left them in.

MR. CALLAGY: I object.

THE COURT: That's sustained. I think you ought to address yourself to what they did leave in. What he took out --

MR. ROSENMAN: I think what he did leave in, your Honor --

THE COURT: Why don't you address yourself to that or else end the cross-examination.

p. 397 Q Is it fair to say, Mr. Austin, that you didn't do anything to check with Mrs. Hemingway or any of the other people who knew Hemingway or the plaintiff, as to the statements about Hotchner that were left in the book printed as Exhibit 1?

A It's fair to say that I personally didn't, yes, sir; but Mrs. Medina did get back to the author about these statements.

Q Did she check with him or did she show him the pages that had been "toned down"?

A I am not -- I know she showed him the statements we were talking about.

Q The toned-down portion?

A Well, I know she showed him that. She talked to him about that portion, yes, sir. I don't know what else she talked to him about.

MR. ROSENMAN: No further questions.

p. 405

THE COURT: Well, isn't what we are talking about truth, that Hemingway did in fact say what is reported by Puche was said? You see, I am not so concerned with Puche's opinion. Puche is entitled, within reason, to have an opinion. Puche regards this fellow in an unflattering fashion and that's Puche's honest opinion. I don't think you get very far with that.

V. Hemingway-direct

p. 414

Q Did you know Jose Luis Castillo-Puche?

A Well, yes, I met him on many occasions.

Q Do you recall on what occasions you had seen him?

A We met first at Pamplona. Later, I saw him several times in Madrid with Hemingway.

Q In your opinion and from your experience, what was the relationship between Ernest Hemingway and Castillo?

A They were very cordial. Hemingway certainly appeared to like him and had spoke of -- I think the first book Castillo-Puche had written, he thought was a very good one and he praised him and he seemed to like him as a person.

Q Do you recall during the time that you were Ernest Hemingway's personal secretary, did Hemingway have occasion to write to Castillo?

p. 414

A Yes. The winter-- the spring that I was in Cuba they did correspond and, you know, on and off.

Q Did you see the letters that were exchanged?

A Yes, I did. I typed them.

Q Again, the letters that you saw, could you tell me in your opinion what their relationship was? That is, Hemingway's and Castillo's?

p. 415

A It was a very cordial relationship.

Q Would you say they were friends?

A They admired each other. I would say they were friends -- not --

Q Mrs. Hemingway, are you familiar with something called the "Hemingway prize"?

A Yes.

Q Was Castillo involved with the Hemingway prize?

A Yes, he was. This is a prize that was set up in the spring of 1960. A certain amount of money--I can't remember how much -- was to be awarded each year in Spain to the journalist who wrote the best article on bullfighting and Antonio Ordonez and Jose Luis were both to adjudicate, to choose the winner of this prize.

p. 499

Q Mrs. Hemingway, are you the widow of Ernest Hemingway?

A Yes.

Q How many years were you married to Ernest Hemingway?

A Actually married 15 years.

Q Do you know the Spanish author and journalist Jose Luis Castillo-Puche?

A Yes.

Q When did you first meet Mr. Castillo?

A My recollection is we first met him in, I think, Madrid in Spain in 1954 when we were on our way from Africa back to Cuba.

Q Did you see him after that?

A I saw him on various occasions after that.

Q Do you remember if you saw him in 1959?

A Oh, yes, indeed, I saw him in 1959.

Q Do you remember where you saw him in 1959?

A Well, doubtless he would have come to see us in Madrid first, and then perhaps have gone to some of the bullfights nearby with us-- that was Ernie's particular interest in Spain--and then, of course, he joined us -- our

p. 500

crowd, as it were, during the fiesta of San Fermin in Pamplona, which was in July. It begins the 7th of July.

Q Did you see Mr. Castillo after the festival in Pamplona in 1959?

A Quite possibly. We doubtless went on -- our habit was to go on to Valencia and then to a number of other bullfights, and he might well have joined us in other -- on other days to see other fights in other places.

Q Did he visit you at your home in Cuba?

p. 500

A Yes, he came through and stayed a day or two sometime in 1958.

Q Do you recall whether he visited you in Spain in 1956?

A We ran into him there. '56 we were in La Grono, Saragosa. Of course, Madrid, because Madrid being in the center of the country, one passes through there. He was stationed primarily in Madrid as a journalist and writer.

Q How would you describe the relationship between Mr. Castillo and Ernest Hemingway?

MR. ROSENMAN: Objection, your Honor.

THE COURT: The time must be fixed as 1959 and prior. I will overrule the objection if the question is modified.

MR. CALLAGY: The court reporter, please modify --

THE COURT: No, no.

p. 501

Q With respect to the period prior to 1959, you testified "'54, '56 and '59," that you met, and were with Mr. Castillo. How would you describe the relationship over that period between your husband, Ernest Hemingway, and Mr. Castillo?

A They were cordial friends.

Q Did you yourself have conversations with Mr. Castillo?

A Yes, indeed; frequently.

Q Do you remember your husband having conversations with Mr. Castillo?

A Of course. Not only when he was with us in Cuba but also whenever we met him in Spain. He spoke, in those days, very little English, but we both spoke Spanish and, of course, we conducted the conversations in Spanish.

p. 505 Q Mrs. Hemingway, would you describe briefly what it was like to be at the festival in Pamplona that summer of '59?

A It was wild. All sorts of people milling around; getting perhaps four to five hours of sleep a night; wandering around the city; drinking out of wine skins; dancing; lunching at four o'clock in the afternoon just before the bullfights; dining at eleven at night; finally ambling home after more dancing, to home, to rented rooms wherever we lived. It was an extremely carefree, haphazard sort of existence and one of our friends mentioned to me -- he said in Spanish. This is a Spaniard --"If you do not move with the fiesta, sleeping and resting when you can, it will destroy you." Not meaning literally; meaning it would be insupportable, that sort of haphazard jollity and gaiety.

Q When you were at the festival that week, were you with your husband all the time?

A No, because he used to get up at seven o'clock in the morning to go to the encierro, whereas I would

p. 506 sometimes stay in bed until later.

Q Do you know whether Mr. Hotchner was with your husband all the time?

A I have no idea. I didn't keep track of who was with my husband all the time. We had some 20 in our crowd.

Q Approximately how many people during that week would you say might have spoken to Ernest Hemingway?

A Three hundred.

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Q Can you recall the languages in which these people may have had conversation with Ernest Hemingway?

A Lots of British used to come down to that fiesta and he spoke English with them, of course. A great many -- a number of French. We ran into groups of, say, eight or ten groups of five to ten French crowds, and he spoke in French with them and, of course, we spoke in Spanish to the local inhabitants.

Q Did he frequently converse with other people in Spanish, who were not local inhabitants?

A Certainly. Spaniards -- a great many Spaniards go to that fiesta from outside Pamplona.

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Q Do you consider it likely that your husband, Ernest Hemingway, made an uncomplimentary remark about Mr. Hotchner in that week?

A Certainly.

Q What's the basis for your conclusion?

A He was apt to make witty and uncomplimentary remarks about everybody, including me.

THE COURT: What do you mean by "witty and uncomplimentary"?

THE WITNESS: He was a man of constant wit and if he could make a crack that was somehow amusing about somebody, he would do so.

THE COURT: Was that apparent to you as a listener, when he was being witty and when he was being serious?

THE WITNESS: Yes.

p. 518 Q Mrs. Hemingway, when did you read "Hemingway in Spain"?

THE WITNESS: '74. That's right; 1974.

p. 519 Q Mrs. Hemingway, at the time you read "Hemingway in Spain," did you think that any of the statements about Mr. Hotchner were unfair or inaccurate?

A No.

Q Have you reviewed the statements about Hotchner, the plaintiff is complaining of in this action?

A Yes.

Q Do you now feel that any of the statements about Mr. Hotchner are either inaccurate or unfair?

A No.

Q Do you feel that Castillo has presented a fair and generally accurate account of the events he describes

p. 520 at the fiesta in Pamplona in 1959?

A Yes, generally accurate.

Q If a Doubleday editor had asked you whether any of the statements about Hotchner were either inaccurate, untrue or gave a false impression of Mr. Hotchner, what would you have told him?

MR. ROSENMAN: Objection, your Honor.

THE COURT: Because of failure to fix a time?

MR. ROSENMAN: No, your Honor; a failure to fix the time and also he is asking an iffy question.

THE COURT: It may be iffy but I would permit this witness to testify if asked at any time prior to June of 1974, what she would have answered.

p. 520

Q Mrs. Hemingway, if asked by a Doubleday editor at any time prior to June, 1974, whether any of the statements about Mr. Hotchner which appear in "Hemingway in Spain" were inaccurate, untrue or gave a false impression of Mr. Hotchner, what would you have told her?

A I would never have noticed such statements.

THE COURT: The question was asking you to assume that your attention was specifically directed to the statements and that after you had noticed it, you were asked for your opinion. That's what the attorney is asking you to assume.

p. 521

If some editor from Doubleday specifically directed your attention to every one of the 17 or so pages on which Hotchner is named, and asked you whether those statements were true.

THE WITNESS: I would have considered them true enough and accurate.

Q Based on your experience and your observations that summer in Pamplona in 1959, do you think it would be possible for an observer such as Mr. Castillo to form an opinion that with regard to Ernest Hemingway, Aron Hotchner was a toady?

A Quite possible.

MR. ROSENMAN: Your Honor, I move to strike that.

THE COURT: Well, it's a fair ground for cross-examination. I said, in a trial anything is possible.

Q Based on your experience and observation that summer, of your husband and the other people in the entourage at Pamplona, do you think it would be possible --

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THE COURT: I think it would be better if you stayed away from the "possible."

Q Do you think it would be likely for an observer such as Mr. Castillo to form an opinion with regard to Ernest Hemingway, that Hotchner was an exploiter of his reputation?

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MR. ROSENMAN: Objection, your Honor.

THE COURT: Overruled. If she knows, she can answer.

Q Do you understand my question.

A I think he might well make that conclusion.

Q Do you believe it would be reasonable for someone to form that opinion?

A Not unreasonable.

THE COURT: Well, you see, we have a separate factual determination about Mrs. Lane which the jury can make, which I will come to in a moment. I don't want to confuse the discussion of the two translations with whether Lane's knowledge can be imputed to Doubleday, which I am treating as a factual issue in this case. And I wanted to tell you, I don't mind telling you on the record, I have consulted with Judge Weinfeld, as I often do. His view is, under the circumstances of this case, as a matter of law, Doubleday would be bound with any knowledge that Lane had from reading the Spanish book. I am really reluctant to go that far. I hardly ever disagree with Judge Weinfeld in such matters, but I think that the jury will believe, if they look at all these facts in a fair light, that knowledge to Lane is imputed to Doubleday, but I think it's a question they ought to decide.

And I will tell them that Mr. Hotchner has an interest in the outcome of the suit and they may consider that in weighing his testimony.

I will then --

MR. HAUSER: Mr. Hotchner?

THE COURT: He is a plaintiff. His good name is at stake, so he believes.

I will then explain to them that there are two separate causes of action alleged here: one for libel and one for invasion of privacy; and that they keep them distinct; that they have different elements and they will be asked to give separate findings on each. I will then list the elements of the cause of action for libel:

MR. ROSENMAN: Your Honor, isn't Purczinsky an expert for the purpose of translation.

THE COURT: Yes, that's right. His testimony is not binding on the jury; the standard instruction we use for doctors and fingerprint experts and anyone else you want to consider in that area.

MR. CALLAGY: Your Honor, as I understand it, you are still going to rule on whether Purczinsky's testimony was for the jury?

THE COURT: I'm coming to that in a moment. I am going to give a limiting instruction as to the use of translations. I will tell them that "The Lane translation has been received only to assist you in determining whether Doubleday knew that the statements made were false or that Doubleday recklessly disregarded the truth or falsity of the statements contained in 'Hemingway in Spain.'"

Then I will point out, the contention is that the statements contained in the Lane translation alone or together with other facts put Doubleday on notice of the falsity of Castillo-Puche's writing.

And then I will tell them that the Purczinsky translation was received only to show what Mrs. Lane knew from her reading of the Spanish edition and where the Lane translation is unavailable to demonstrate what the original Lane translation might have revealed to Doubleday.

MR. ROSENMAN: Why only where the Lane translation is unavailable?

And I will explain to them that plaintiff has the burden of proof to establish all of the elements of his claims by a preponderance of the credible evidence. However, in a case of this nature, there will be an element as to which he bears a heavier burden of proof as to which I will discuss in a moment. Then I will define the preponderance of the credible evidence.

Then I will instruct them further that there is an element in a libel or invasion of privacy case that must be proven by a clearer standard of proof and that is that the defendant published the statements complained of, knowing that they were false or in reckless disregard of whether they were true or false and as to this element the proof must be clear and convincing and I will define that in terms of Aetna Insurance against Paddock, which I know you are both familiar with.

Then I will define direct and circumstantial evidence in the traditional fashion and I will tell them expert testimony is not binding upon them.

Have there been any experts called as such, other than this professor that we had?

MR. ROSENMAN: The professor and the journalist.

THE COURT: Was he an expert or was he testifying as to --

MR. ROSENMAN: If we can talk off the record. I don't know.

THE COURT: I think he was really testifying as to the man's reputation in the field. I think that's opinion testimony rather than expert testimony where special knowledge is involved, such as Purczinsky.

THE COURT: Gentlemen, as to all written requests to charge, to the extent not charged in substance, you will be deemed to have an exception and it is not necessary for you to take an additional exception of record in order to protect your rights.

Furthermore, any exception taken at this conference need not be repeated at the end of the charge to the jury at which time I will probably invite you back in here and take any further or additional requests.

I expect to have a revised form of special verdict available in just a few moments. When I do, I will go over it with you.

I would say also that I reserve the right to meet any problem which may arise in the course of summation which calls for a comment or action on my part and will do the best I can with it. I'm not limited in so doing by anything said in this conference.

I will begin with my ordinary introductory material used in most civil trials in this court, as to the importance of impartiality and fairness and the nature of their duties, and that the parties need to be treated as equals; that any comment I make on the facts is not controlling; that the Court is neutral and any disputes between the attorneys are of no concern of theirs, the attorneys are only doing their duty.

I will then explain the fact that the rules which apply in a civil case are different from those in a criminal case and that the burden of proof applicable here differs slightly from the burden of proof that applies in the ordinary civil case.

First, that the plaintiff must prove that the statements complained of or a substantial number of them were made concerning him.

Second, that the plaintiff must prove that the statements complained of or a substantial number of them were defamatory.

Third, he must prove falsity.

And fourth, that the defendant Doubleday published the libelous statements either knowing that these statements were false or in reckless disregard of whether the statements were true or false.

And then, I would define the elements. I will tell them some of the complaints complained of, he referred to by name, so he can tell that those statements are about him. Others he is not, but he contends they were made concerning him and it's for them to determine whether they were.

And I'll remind them that they had an opportunity to read the book and in considering whether statements were made concerning Mr. Hotchner and whether these statements were defamatory,"you are not to consider the views, opinions or descriptions expressed with regard to other persons portrayed in 'Hemingway in Spain.'"

I will then take up the second element --

MR. ROSENMAN: What was the end of that, sir?

THE COURT: In determining whether Hotchner was defamed, they are not to consider what Puche said about other people in the book as evidence of defamation of Hotchner.

MR. HAUSER: Can't they take that as evidence of the tone of the book, as part of the innuendo, if, for example, he characterized Valerie as a sluttish type of girl which was implied? Would that be --

THE COURT: I don't know, Mrs. Hemingway had her yesterday posing as a journalist. There was never any suggestion in the book or Valerie's testimony or in her cross-examination which she was, other than what she was.

MR. CALLAGY: You heard her say she didn't see her credentials and that's what she meant by "posing as a journalist."

MR. HAUSER: Judge, I am interested in this innuendo. There can be libel by innuendo.

THE COURT: There cannot be libel by innuendo of Hotchner by saying that the Irish girl was a person of easy virtue.

MR. HAUSER: Well, if she was part of the intimate coterie which included Hotchner and the Davises.

THE COURT: Even so. The fact that this book contains defamatory matter concerning others is no evidence that the author defamed Hotchner.

MR. ROSENMAN: I am more interested -- I agree --

THE COURT: Why don't you wait until I finish.

I would then go on to the second element and I would tell them they have to consider the relevant passages as well, in the context in which they appear in the book, and they must take the words as meaning what persons generally understand the words to mean. And I will define a writing as defamatory if it tends to expose a person to public contempt, ridicule, aversion or disgrace, or if it

tends to induce an evil or unsavory opinion of him in the minds of a substantial number of respectable members of the community and it may be defamatory although it doesn't accuse him of any crime or any wrong or any immoral or unethical behavior. However, it must be such as to cause him to be shunned or avoided or deprived of the friendly association of respectable members of the community.

I am going to interrupt for just a moment and talk with you about the form of the special verdict. I have here in draft a single copy of the form, the first two pages. The balance is substantially the same. It's my intention to modify this draft by putting after the Question 1a the words, in substance, "If your answer is no, omit the balance of Question 1 and proceed to Question 2." And I will put that after each lettered response.

Perhaps we can expedite our conference by permitting you to take the first two pages and looking over each other's shoulders at them. If you want to look at these over each other's shoulders, perhaps you can do that. Just put them on the table and stand and look at them. You can all look at them at the same time.

I might say that I do not expect in summations that attorneys will comment in detail about the special verdict.

MR. ROSENMAN: No.

THE COURT: If you want to say that "You will be asked to answer these questions, when the questions are asked, you think the answer should be so and so," that you can do; but as far as instructing them about it, I prefer that the Court do that.

MR. MARSHALL: It's not significant. Mr. Rosenman pointed out in one of the passages in his complaint, there are typographical errors and a few words are changed.

THE COURT: I will deem the complaint to comply with the book. If there are typographical errors, call my attention to it and I will correct it.

The Court understands that the proposed form of special verdict which the defendant Doubleday furnished the Court this morning or yesterday and with which I have been working contains those mistakes. If you wish to have them corrected, we should be advised immediately.

MR. ROSENMAN: I think you better tell Mr. Schneide of any typos.

THE COURT: Bear in mind, the Court doesn't have unlimited secretarial resources here. If any part of what the defendant submitted to the Court is incorrect because of typographical errors and if either attorney wants those typographical errors conformed to the proof, corrected, I really must be informed very promptly.

Off the record.

(Discussion off the record.)

THE COURT: May the record show that both parties to this trial agree that the typographical errors in the proposed form of special verdict submitted by the defendant are insignificant and the Court may disregard them. Is that so?

MR. ROSENMAN: Yes, sir.

MR. CALLAGY: Yes, your Honor.

THE COURT: All right.

Is there any other comments about the proposed form before I ask the staff to continue with it?

MR. HAUSER: Sir, it's understood, I believe you already said at our earlier conference, it's going to include punitive damages which they omitted.

THE COURT: That will come at the end. We have to determine liability before we get to the question of damages.

MR. HAUSER: They included actual damages in their proposed --

THE COURT: The Court is talking in terms of general damages and punitive damages following the language used in Gertz and some of the other recent cases, and they are being separately inquired of as to each. The Court is also concerned with the question of whether the special verdict must resolve whether there is any duplication of any damages because, as I understand it, if the plaintiff prevails on its first and second cause of action, it can't get paid twice.

MR. CALLAGY: That's my understanding.

THE COURT: And they must be required to respond specifically as to that.

MR. ROSENMAN: That's why our special verdict provided for each cause of action:

A, Compensatory; and

B, Punitive.

THE COURT: That's what I intend to do, but I intend to ask them specifically whether any part of it, any part of the damages overlap or include the same damages.

MR. ROSENMAN: Your Honor, I understand the reason for your asking these questions as a special verdict to the jury. I can see how in "a" to Question 1: "Do you find this passage refers to A. E. Hotchner?" is not mentioned there, but in 2 it is and it seems to me to ask the jury, "Do you find this passage refers to A. E. Hotchner?" is going to raise a question in their mind, that the Judge doesn't think it does.

THE COURT: Oh, quite the contrary. I will certainly tell them, by asking the question, I don't intend to convey any thoughts as to how the question should be answered.

MR. ROSENMAN: Is there any reason for "a" under 2?

THE COURT: Don't you think that they can resolve that?

MR. ROSENMAN: Well, the less they have --

THE COURT: What do you think about this?

MR. CALLAGY: I think it's appropriate to ask the same question with respect to every passage.

THE COURT: I believe so.

All right. Please all be seated. I am going to go forward with having the balance of the special verdict form made up. I'll try to show it to you before it is Xeroxed if it's possible.

I will then explain the writing may be defamatory both because of explicit statement and also by innuendo, and I will define that in the context of the mind of an ordinary reader; and that they cannot consider in determining whether the passages are defamatory the Spanish edition or any translation of that edition except for the Doubleday edition as it actually appeared in print.

If there is an argument about the fact that these words or phrases were used for their rhetorical or literary value as this last witness is really testifying, then I may tell the jury that even if used for rhetorical or literary purposes, passages may still be defamatory if they are used in a way that conveys a false representation of fact.

Then I will go into the element of falsity and I'll tell them that they can find the passages true even if they were not literally true; if there were slight inaccuracies of expression, those would be immaterial providing the defamatory charge is true in substance. I am taking that from Yarmove against Retail Credit.

MR. HAUSER: Cumulativeness?

THE COURT: Let me take that up with you in a moment.

Then I would call the attention of the jury to the fact that the statements complained of fall into two general categories: Statements by Puche of what he himself observed, and opinions he held; and statements by Puche of what Hemingway believed or allegedly said to Castillo-Puche about Hotchner; and that they may treat a statement, a representation that a particular statement was

the opinion expressed by Ernest Hemingway, as a statement of fact rather than opinion; but I told them that Hemingway's opinion could be -- the statement that Hemingway believed a particular belief may be true, although his belief may have had no basis in reality.

MR. CALLAGY: Does that cover the conversations between Hemingway and Ordonez?

THE COURT: They are really conversations with this author because the author purports to place himself as a listener or bystander or participant, I guess --

MR. CALLAGY: Why shouldn't we make that clear.

THE COURT: All right, in Ordonez and Castillo's presence.

MR. MARSHALL: Isn't the question: whether Hemingway ever said the statement; not, whether Hemingway actually believed it?

THE COURT: Well, if he said it --

MR. MARSHALL: He didn't report it as saying Hemingway always said this or this was Hemingway's belief. He said, "I remember Hemingway once said to me."

THE COURT: I don't quite understand your point.

MR. MARSHALL: He said the statement of Hemingway's opinion must be treated as a statement of fact.

THE COURT: Even if Hemingway has no basis for his opinion. That's within the defendant's request. That's where I got that from.

MR. MARSHALL: I am not clear on what your Honor is saying. My point is that --

THE COURT: A representation that a particular statement was the opinion expressed by Ernest Hemingway, may be treated by you as a statement of fact rather than opinion. In connection with this type of statement, I caution you that the statement that Hemingway believed a particular belief may be true, although Hemingway's belief may have had no basis in reality.

Likewise, you may find that certain facts are true but that they did not form the basis of Hemingway's belief and therefore, the statement of Hemingway's opinion may be found to be false.

MR. MARSHALL: My point is, the question is not whether that was in fact Hemingway's belief or not; the question should only be whether Hemingway ever made the statement that is being reported.

THE COURT: To Castillo-Puche. That's the purport of what I just said.

MR. CALLAGY: You said, whether Hemingway believed it to be true; but, really, it is whether Hemingway made the statement to --

THE COURT: I will remove that provision if you don't like it. I will take it out.

MR. CALLAGY: Can we just modify it so we refer to the fact that the statements occurred between Hemingway and these people?

THE COURT: Well, that's what I've told them: A representation that a particular statement was the opinion expressed by Ernest Hemingway may be treated as a statement of fact rather than opinion. This comes as a prelude to the fact in the next point, that an expression of the author's opinion will not be the basis for a libel action if it qualifies as fair comment. That is to say, that it's based on truly stated facts or does not contain imputations of corrupt or dishonest motives on the part of the person whose conduct or work is criticized, except insofar as such imputations are warranted by the facts and as an honest expression of the writer's real opinion.

MR. ROSENMAN: And is labeled as such?

THE COURT: I didn't say "is labeled as such." I think, in the context of this case where Castillo gives his opinion, I think it's quite clear that where he gives Hemingway's opinion as stated by Hemingway to Ordonez or Castillo-Puche, I think that's clear too. I separated these matters for the jury and nothing prevents you gentlemen in your summations, from calling attention to these matters.

MR. HAUSER: Are you finished with what you are saying about fair comment?

THE COURT: Yes.

MR. HAUSER: Are you --

THE COURT: I might say, they are not disjunctive, these three items I mentioned.

MR. HAUSER: I request you to say that personal

attacks on the character or person are not fair comment. That's Cheatham against Wehle.

Referring to Paragraph 27 of our request, and also 28; that no comment or criticism is fair or just even on a matter of public interest if made through ill will or malice.

MR. CALLAGY: New York Times v. Sullivan is 64 --

THE COURT: Please, gentlemen.

MR. HAUSER: Doesn't make any difference.

THE COURT: Gentlemen, please. I think I can state to you that the substance of the rule of Cheatham against Wehle is embodied in the charge.

Then I will go to the fourth element that they must show that they published them knowing them to be false or in reckless disregard or whether they are true or false and that plaintiff would see this element if he proved that Doubleday, acting through its officers, employees or agents, knew that the statements made in the English language were false. Plaintiff would also see this element if he proved Doubleday acted in reckless disregard of the truth or falsity of the statements published in "Hemingway in Spain."

And I want to caution all of you that I do not use the word "actual malice," and I don't think that's a proper word to use with a lay jury. I'm using the word "knowledge" that they were false or reckless disregard of whether they were true or false. This "actual malice" is a short-cut expression which seems to appeal to the Supreme Court, but which I think would be utterly confusing

to the jury and I hope that in your summation you will not be using the expression "actual malice," which I consider to be a shorthand form of saying "knowing these passages to be false or in reckless disregard of whether they were true or false."

MR. ROSENMAN: I had in my summation used the word "actual malice."

THE COURT: You see, if you want to argue that Puche possessed and showed in the Spanish book malice against Hotchner, that's a good factual argument, but the standard to be applied to Doubleday here is one of knowledge that they were false or reckless disregard of whether they were true or false. There is no evidence of actual malice, as the layman would use the term, on the part of Doubleday. Quite the contrary, Mrs. Medina was anxious not to, in her words, get at Hotchner. So if you use those words with regard to this defendant, in a layman's sense it would be totally unfounded. If you use Supreme Court shorthand, that's a different story.

MR. CALLAGY: How do you define "reckless disregard"?

THE COURT: I'm coming to that. You must conclude the defendant Doubleday in fact entertained serious doubts as to the truth of the statements about the plaintiff when it published the book. You may find that Doubleday acted in reckless disregard for the truth if you find that there were obvious reasons to doubt the veracity of Castillo-Puche, the author, or the accuracy of his writing. And they may consider all of the surrounding circumstances. They may consider any evidence of negligence on the part of Doubleday, its employees or agents, and they may consider

any ill will, bias, spite or prejudice of Castillo in determining whether Doubleday acted in reckless disregard of the truth, but I will emphasize to them that negligence or a failure to investigate or verify the statements complained of standing alone, would not be sufficient to make a finding of reckless disregard.

If, however, Doubleday had clear reason to suspect the truth of the statements, then you may find that there was some obligation for it to investigate further.

Recklessness implies a higher degree of culpability than negligence. A failure to exercise ordinary or reasonable care in ascertaining the truth of published material does not, standing alone, render a publisher liable in damages for libel. Then I will define "recklessly" as meaning "to act wantonly with indifference to consequences" and if they find that they published it in good faith, sincerely believing that the statements were true, then they didn't act recklessly.

MR. HAUSER: You cited St. Amant to the effect about the investigation, but you omitted our request of No. 18 from St. Amant, that the mere assertion by a defendant that it believed the matter published to be true, does not insure against liability. And Doubleday repeatedly testified that they had no reason to believe it was not true.

THE COURT: Well, I'll check into that. I'll check into that and see --

MR. HAUSER: It's our No. 18.

THE COURT: I'll reconsider on that one.

And then I will tell them that the corporation acts through its agents and notice or knowledge received by the agent or employee in the course of his employment within the scope of his duties is notice or knowledge of Doubleday.

MR. HAUSER: And an independent contractor can be an agent.

THE COURT: Yes, they can be an agent. I will instruct them that they are to consider -- I'm using the definition that an agency relationship is created as a result of conduct by the parties manifesting that one of them is willing for the other to act for him and subject to his control and that the other consents so to act. And they may determine it, there has been some evidence in this case that Doubleday employees communicated with Mrs. Lane at various stages prior to completion of the translation.

There is some evidence that Doubleday was not particularly concerned with the final product that Mrs. Lane produced, that is, her translation; but rather that she worked subject to some direction or control of Doubleday. Considering all of the circumstances surrounding the acquisition of the Spanish edition and its translation, you are to determine whether the relationship between Mrs. Lane and Doubleday was an agency relationship.

And then I'm going to tell them, unless they are so satisfied, they cannot be deemed to have had notice through Mrs. Lane, of the Spanish words in the original book. But they will have notice of the words in the original Lane translation which were not used in the English

book. And where the Lane translation is not available at this trial, they may infer that she translated correctly; and if they believe the testimony of Prof. Purczinsky, they may consider that that's what the Lane pages which are missing contained.

MR. ROSENMAN: What about --

MR. CALLAGY: Shouldn't you say "might have contained"?

THE COURT: No.

MR. ROSENMAN: I have two thoughts on that:

First of all, your Honor indicated and we indicated that we were in concurrence that knowledge by her as an independent contractor, even if not an agent, was imputable.

THE COURT: No. I don't think it's that way, but an independent contractor may be an agent and that I regard as an issue of fact in this case. I am following the statement on agent on this.

MR. ROSENMAN: The second point is that where she left the words out, even where the Lane translation is there, we are entitled to say this was editorial notice to her of malice, that she deliberately left out. And I am entitled --

THE COURT: Mrs. Lane?

MR. ROSENMAN: Aren't they entitled to take Purczinsky on that?

THE COURT: Only if Lane's knowledge is imputed to them. That depends on the jury's evaluation of the relationship between Lane and Doubleday.

MR. ROSENMAN: I wasn't sure I caught that, that thought you just expressed in there.

THE COURT: I think it's in there.

MR. CALLAGY: Your Honor, in that regard, should the Purczinsky translation be eliminated from the view of the jury to the extent that the Lane translation is available, because it's all on that same exhibit.

THE COURT: I have given a cautionary instruction on that. I gave them one in the beginning when I took it. I think a strong argument could be made for telling them that anything Mrs. Lane read in Spanish as shown by Purczinsky, was notice to Doubleday, but I don't intend to do that in the interests of avoidance of error.

Then I will go into the second cause of action, invasion of privacy, and I will set forth the elements of that cause of action:

First, that the plaintiff must prove that his name was used for advertising purposes or for the purposes of trade.

Second, that he didn't give written consent.

Third, that he was portrayed in a false light or as participating in fictional events; that is to say, conversations or actions that never actually happened.

And fourth, that they used his name in a context so portraying, knowing that context to be false or in reckless disregard of whether the context in which he was so portrayed was true or false.

MR. HAUSER: In your special verdict preparation, I don't think the defendant's, whose basic form you are using, said "false light or fictionalized." Will that appear in the special verdict?

THE COURT: The special verdict will conform to the charge. You will get another look at the special verdict before the jury sees it. It's just that I am on a scheduling problem here.

And then I will define those elements. I don't think anything in here will give you any problem.

MR. MARSHALL: Is it clear that all four elements must be met?

THE COURT: Oh, indeed. And I can say conversations which never happened in which it is written Hotchner participated, shall be regarded by you as fictionalized.

MR. ROSENMAN: Is your Honor going to comment on the book as a whole, as the Court?

THE COURT: I think not. I'm attempting to make certain that they decide all issues of fact and they understand that I have no opinion. I'm trying to give them a bald view of everybody's contentions here. I know I am able to, but I think it's best that I don't; and unless it appears essential after the summations, I am going to set forth the contentions rather than commenting.

MR. MARSHALL: Your Honor, in light of what we have just been discussing, there are no conversations in which Hotchner took part. Does that perhaps give a false impression to the last statement your Honor read?

THE COURT: Well, I suppose I should say, was present instead of -- I will modify that to make sure that I state it correctly. I have a memory of this book. If I had to testify, I would say that he has got somewhere in there a conversation, but I didn't mark it down. Let's not take the time with it now.

MR. ROSENMAN: Between Hotchner and whom else?

THE COURT: A conversation between Hemingway and author in which Hotchner was a participant or a conversation between Hotchner and Hemingway in which author was a participant. Even if the participant was merely reacting to the conversation by some physical means instead of expressing words. I can be wrong about that.

MR. HAUSER: We have already stated the physical reaction: "Following with sly glances." It's on the record.

THE COURT: That's arguable. He might just know they were talking about him because his name might sound the same in Spanish.

MR. HAUSER: Your Honor, with respect to your charge on Section 51, would you charge the jury that the publication of the book is using the name for purposes of trade. There are cases in New York to that effect.

MR. MARSHALL: No, there are not.

MR. CALLAGY: Not at all. The name has to be used to sell the book.

THE COURT: I'm going to tell them, if they find that his name was used in connection with a fictionalized account, they properly may consider and find that the publication was made for purposes of trade.

MR. CALLAGY: Your Honor, doesn't Spahn say the book must be about the person. It seems here he is a minor character. How could the use of his name amount to an invasion of privacy.

THE COURT: I don't think being a minor character is that important. To him, he is a very major character.

MR. MARSHALL: Your Honor, there are cases that have discussed fictionalization that have involved -- Spahn and Koussevitsky --

THE COURT: Koussevitsky was certainly not the principal character. The book was about Rasputin. Wasn't that so? Koussevitsky was a relatively minor character, one of the people who helped kill Rasputin. It was a book about Rasputin, wasn't it?

MR. CALLAGY: But their names were used to sell the book, your Honor.

THE COURT: I adhere to my position on this matter. You may have an exception.

THE COURT: We are charging damages in terms of the New York Pattern jury instructions which I know you are both familiar with.

MR. HAUSER: In view of the circumstances of this case, would your Honor paraphrase the language of Judge Weinfeld in Reynolds against Pegler?

THE COURT: I am not really familiar with that case but I doubt it very much. I think this case hinges on the issue of reckless disregard, which is a big hurdle in this case as far as Doubleday is concerned. It's something the jury has to deal with and that's what we are charging here.

MR. HAUSER: Once we get across that hurdle, then the damages become very important and particularly since --

THE COURT: You see, I am charging general and actual damages which includes humiliation. I am using the New York Pattern jury instructions. When you get to the question of punitive damages, if they do, that's in my view only allowed to punish a defendant who has published

with deliberate intent to injure the plaintiff or in reckless disregard and without regard to their possible injurious consequences for the plaintiff. Now, that, of course, they had because she -- she being Mrs. Medina -- wrote in her letter that she seemed to believe he was an author of some note, perhaps a professor somewhere.

The regard for the possible consequences is present in the record on this case, but I'm leaving that for the jury.

MR. HAUSER: Sir, I'm not talking about punitive damages as such. I'm talking about the fact, as Judge Weinfeld emphasized, that a person may be of such high character that the worst kind of libel would not damage him or besmirch his reputation, but obviously that would be no reason for denying him punitive damages. Now, obviously, the defense is going to claim that Hotchner was not damaged financially here.

THE COURT: Well, he told you he was humiliated. He told you about this radio broadcast. That's humiliating to have some student call up and say, "Aren't you a faker?" Nobody has rebutted that and that should have been taped.

MR. HAUSER: That comes under the heading of "General Damages." Now, we are talking about punitive damages and there the fact that he was not -- or even in connection with general damages, the fact that he was not financially -- even assuming they find he was not financially harmed, he is still entitled to damages to his reputation without relation to the financial damage.

What I would like you --

THE COURT: I am not going to -- I decline to charge, as requested, out of Pegler.

MR. MARSHALL: Your Honor, one point. Hotchner appeared on two radio shows in Pittsburgh:

One, there was no mention made of him.

The other, the tapes were destroyed after two weeks and there was no record of anything said.

THE COURT: That's the way things happen in life.

MR. HAUSER: First of all, you said that you are going to come back to libel by cumulation. That's our Item 6, the King Kullen case.

And number two, sir, I don't think you mentioned about charging about libel per se, which is very important here.

THE COURT: I don't regard it necessary to charge in terms of libel per se. I think that the general thrust of the charge is sufficient to make them understand what's involved in defamation here and I will not use the expression "libel" per se in my charge. I must say, I have a distinct reservation that in the context of this case that would even be appropriate terminology.

MR. HAUSER: The important thing about libel per se here is not the use of the phrase per se, but the fact is if he was injured in his business, and we claim that his relationship with Hemingway was a very important part of his business, there need be no showing of special damages. That's highly important here.

I refer you particularly to No. 2 of our requests to charge.

THE COURT: You see, I charged the right to general damages and I think I have covered that. I believe I will include Charge No. 6 and leave that as a question for them to decide whether to take it cumulatively. They --

MR. HAUSER: In your general damages, will you include the fact that you don't have to prove out-of-pocket damage.

THE COURT: Sure.

MR. HAUSER: Using that phrase or equivalent?

THE COURT: Yes.

MR. ROSENMAN: Your Honor, you don't cover the fact, it seems to me, unless I missed it, that the damages which Puche is responsible for lies within your province entirely and they are to give a verdict --

THE COURT: I think I will tell them that the case of Puche is not before them. They are only deciding the issues as between this plaintiff and the defendant Doubleday.

MR. ROSENMAN: Is it unfair to say that the issue of damages, if any, Puche pays, will be fixed by the Court --

THE COURT: It's none of their business. You don't really want that, do you?

MR. ROSENMAN: I don't want them to feel that because --

THE COURT: I will tell them, although Puche is named as a defendant, that issue is not before them. That I will tell them.

All right, thank you, gentlemen.

U.S. DISTRICT COURT
FILED
JUN 3 1976
S. D. OF N. Y.

CHARGE OF THE COURT

74 CIV 5516

(Brieant, D.J.)

THE COURT: Members of the jury, we now reach that point in the trial where you are about to enter on your final function as jurors, which you all appreciate is one of the most important duties of citizenship in this country. I know that each of you have given very careful attention to the evidence in the case during the period of time we have been together this week and I am sure each of you will approach your final deliberations in that same fine spirit that you have so far displayed, and that each of you will act with fairness and impartiality and reach a just verdict.

As I mentioned to you at the beginning of the trial, in our court system the function of the Judge in the case and the function of the jury are different. You are not lawyers and it is my duty as Judge to instruct you as to what the law is and it is your duty to accept the law as I state it to you, and then to determine the fact from the evidence and ascertain whether the plaintiff has sustained his burden of proof as to either of the two claims made here in this case.

Now, just as I am the exclusive judge of the

law, you the members of the jury are the exclusive judges of the facts. You and you alone determine the weight, the effect, the value of the evidence and the credibility or truthfulness of the witnesses and on that basis you will determine and decide the issues in this case.

In doing so you will use your common sense and rely on your everyday human experiences.

This case, as I think I mentioned very recently, should be considered and decided by you as a dispute or an action arising between persons of equal standing in the community and equal worth, holding the same or similar stations in life.

A corporation is entitled to the same fair trial at your hands as a private individual would receive. All persons, including corporations, are equals before the law and they are equals before an American jury, and they are to be dealt with that way.

Now, if in the course of these instructions I make any reference to any evidence or talk about any fact which doesn't agree with your recollection, you are to disregard that because it is your recollection of the evidence that is controlling, not anything said by me or by the lawyers in their own statements or in their summations or during the trial. Questions are not evidence. It is

only the answers that are evidence and the exhibits, the documents.

The attorneys have the right and the duty to press the various legal theories they hold. They are simply performing their duty in this trial.

Any evidence as to which an objection was sustained by the Court or any evidence ordered stricken out or any argument which you have been instructed to disregard must be disregarded in their entirety. Please put out of your mind any exchanges which may have taken place during the trial between the attorneys or between any lawyer and the Court because I don't favor one side or the other or criticize anybody, and I don't wish to indicate to you that I have any opinion as to the truthfulness of any witness or as to the merits of the case in any way.

That is your function. It is yours alone and I leave it entirely up to you. So do not assume from anything I may say that I may hold any opinion as to any matter concerning the issues before you.

Please don't reach any opinion that I may have any attitude or that I may tend to favor any particular result in the case because I do not.

In this trial you are being asked to render verdicts only with regard to plaintiff's claim against

Doubleday & Company.

In so doing you will have to consider the truth or falsity of what Castillo-Puche wrote as Doubleday published it. You are not to concern yourself with any claim, if any, that plaintiff may or may not have against the author, Mr.Puche. That case is not before you for your decision.

In the course of my instructions to you and in your deliberations you will have to consider whether Doubleday published the book "Hemingway in Spain" knowing that statements contained therein were false, if they were, or in reckless disregard of whether the statements were true or false. You will consider only the knowledge of Doubleday and its agents and not the knowledge of Castillo-Puche that was not conveyed directly or indirectly to Doubleday or its agents.

This is a civil case to recover money damages for libel and invasion of privacy. In this type of case the burden of proof and the standards by which you measure the sufficiency of the proof are somewhat unusual. The rules that apply in a civil case are distinct from those that apply in a criminal case, and the burden of proof applicable here differs slightly from the burden of proof that applies in the ordinary civil case.

In a criminal case, as I am sure all of you know, you ordinarily would be instructed by the Court that the prosecutor has the burden to prove guilt beyond a reasonable doubt. That is the standard of proof that society applies in criminal cases, but that high standard of proof does not apply in a civil action.

In an ordinary civil action the plaintiff has the burden, before he may recover any verdict, to establish to the satisfaction of the jury all of the elements of his claim by a preponderance of the credible evidence. However, in a case of this nature, there will be an element in the case as to which the plaintiff bears a heavier burden of proof, less than that of a criminal case, but greater than that of an ordinary civil case, and I will discuss this with you further in a moment. But except for that one element as to which a different rule applies, all of the other elements in this case must be proved by a preponderance of the credible evidence before the plaintiff may prevail as to either of the two claims which are before you.

I mention again to you there are two separate claims or causes of action, each of which you will consider separately and as to each of which you will give a separate verdict, and the verdict on one does not necessarily

FILES, U.S. COURTHOUSE

control the outcome of the verdict on the other because they are separate matters, they have separate elements and separate decisions to be made by you, just as if the two separate lawsuits were being tried by two separate jurors.

You may say that a fact is proved by a preponderance of the credible evidence when all of the evidence that you believe tends to persuade you what the witness or witnesses have said as against any other evidence or contrary testimony or evidence that has come into the case, or lack of evidence.

If you believe that the testimony when weighed on these issues of fact balances in favor of any particular claim asserted by the plaintiff, however slightly, then he is entitled to be considered as having proved that claim by a preponderance of the credible evidence.

It is often said that evidence is to be weighed on scales and if you find that the evidence on any element or issue of fact weighs equally in favor of the plaintiff and the defendant, that is, that the scales are evenly balanced, then the plaintiff would have failed in its burden of proving that element or claim by a fair preponderance of the credible evidence and may not prevail.

However, if the scales tilt, however slightly in

the plaintiff's favor as to that element, that would constitute a preponderance of the credible evidence and he would have satisfied the legal burden of proof imposed on him in a civil case even though the proof would not rise to the level of the proof required in a criminal case, which I mentioned earlier.

As I mentioned a moment ago, there is an element in a libel case and in an invasion of privacy case that must be proven by a higher standard of proof and this element is that the defendant, that is, Doubleday, published the statements complained of knowing that they were false or in reckless disregard of whether they were true or false.

As to this element the proof must be clear and convincing. What is meant by this term "clear and convincing"? Well, the meaning of that term is that the witnesses to a fact must be found by the jury to be credible, that is to say, believable, and the jury must find that the facts as to which they have testified are distinctly remembered and the details are narrated exactly and in due order and that the testimony be clear, direct, weighty and convincing so as to enable you to come to a clear conviction or conclusion without hesitancy as to the truth of the precise facts.

Now, for your guidance in considering the evidence you have heard, I must tell you there are two classes of evidence recognized and admitted in courts of justice, upon either of which the jurors may determine any factual issue in the case. One type of evidence is called direct evidence, and the other is called circumstanti evidence. There is nothing difficult about understanding the distinction between the two.

Direct evidence tends to show the fact in issue without any need for further amplification, although, of course, there is always the question as to whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. That is, evidence that tends to prove the fact in issue by proof of other facts which have a legitimat tendency to lead the mind to infer that the facts sought to be established are true.

There is a traditional example given of circumstancial evidence. Let's assume that we were upstairs in one of the larger courtrooms where you could look out and see the street from the windows, and you know, sometimes it is difficult to tell merely by looking out of the window whether it is raining or not. But if you look out t

window and you see the people are going by in the street with their umbrellas up, you will usually come to the conclusion that it must be raining. You have your direct evidence, the evidence of your own senses that the umbrellas are up. And that evidence constitutes circumstantial evidence from which you are entitled to conclude that it must be raining.

In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts which are in issue. And circumstantial evidence, if you believe it, is of no less value than direct evidence.

Now a word about so-called expert witnesses. Members of the jury, you will recall that Professor Purczinsky testified concerning his qualifications and experience and his proficiency as a teacher in the Spanish language.

Now, when a case involves a matter of special knowledge or skill not ordinarily possessed by the average person, an expert is permitted to state his opinion, to testify as to his opinion or, in this case, to translate and explain the meaning of a foreign language document for the information of the Court and jury.

You should consider Professor Purczinsky's

expert opinion stated in the form of a translation of parts of the Spanish edition and give it such weight as you may think it deserves. If you decide that the opinion of the expert is not based on sufficient skill, learning or experience in the area in which he has testified to justify regarding him as an expert, then you must disregard his opinion entirely. The opinion of an expert is subject to the same rules concerning reliability as the testimony of any other witness. It is given to assist you in reaching a proper conclusion. This testimony is entitled to such weight as you consider it is entitled.

The translations made by Mr. Purczinsky should be considered by you but if you don't believe his testimony, you can disregard it just the same as you will disregard any other testimony in the case which you don't believe.

Some evidence and testimony in this case has been received for a limited purpose and on some occasions I so advised you when the evidence was received during the course of the trial and I told you I would take it up with you later and now it is later.

Specifically, the Lane translation, Exhibits 5A through 5G, and one of the columns on Exhibit 30 have been received only to assist you in determining whether Doubleday knew that the statements made were false or whether

Doubleday published with reckless disregard of the truth or falsity of the statements contained in "Hemingway in Span,"

It is contended by Mr. Hotchner that the statements contained in the Lane translation, alone or together with other facts, put Doubleday on notice of the falsity of Castillo-Puche's writing.

That is a matter for your consideration, whether or not that is what the evidence shows.

Likewise, the Purczinsky translation has been received only for two limited purposes, one of which is to show what Mrs. Lane knew from her reading of the Spanish edition and second, in those instances where the Lane translation is unavailable as to some pages, to demonstrate what the original Lane translation might have revealed to Doubleday or what it might have contained.

In determining what testimony you will accept, you jurors must make your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth and the degree of weight you choose to give to that testimony. The testimony of a witness may fail to conform to the facts as they occurred because the witness didn't accurately see or hear what he or she testified about or because his recollection of the event

is faulty or because he hasn't expressed himself clearly in giving testimony and there is no magic formula by which you can evaluate testimony.

Here again, you bring to this courtroom all of the experience and background of your everyday lives. In your everyday affairs each of you determine for yourselves the reliability of statements made to you by others and the same tests that you use in your everyday dealings are the tests which you will apply in your jury deliberations.

Every witness who testifies is presumed to speak the truth unless you the jury find and believe otherwise, and this presumption of truthfulness may be overcome by your conclusions reached as a result of your observation of the manner in which a witness testifies, the character of his or her testimony or by a consideration of other evidence affecting his or her motives or by the presence of contradictory evidence in the case, documents or the testimony of other witnesses which you do believe.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to indicate to you whether the testimony is worthy of belief.

You can consider each witness' intelligence, his motive, his state of mind, his demeanor, that is to

say, his appearance to you from the witness stand and his manner when he was on the witness stand. When I say "his manner," I apply this instruction equally whether I would say his or her.

You may, of course, consider the interest or lack of interest of any witness in the outcome of this case. The witness who is interested in the outcome is not necessarily unworthy of belief, but interest is a factor which you may consider in determining the weight or credibility of the testimony. In doing this you will consider whether the testimony of a witness is borne out or corroborated or substantiated by the testimony of others or by documentary evidence or exhibits.

You may consider the bias or prejudice or favor of a witness, if there be any, and the manner in which the witness gives testimony on the stand, the opportunity the witness had to observe the facts and to hear and understand any conversations with respect to which he testifies or she testifies, and the probability or improbability of the testimony in the light of all the other events of the case. These are all items to be taken into your consideration in determining the truthfulness and weight, if any, which you will assign to the testimony of any witness.

If you find that a witness has been evasive in his or her answers in court or has been fencing or arguing with an attorney asking questions of him or her, you may consider this as a reflection on the credibility of that witness.

If you find that a witness has testified inconsistently on a deposition before trial with respect to testimony given at trial, that also is a fact of your consideration.

If you find that a witness has exhibited a bias or a prejudice in favor of or against either party to this lawsuit, you may consider this in determining what weight, if any, you will give to his or her testimony and whether you will believe it or not.

All these various considerations which I have mentioned may make it appear that there is a discrepancy in the evidence and then you will consider first whether this may be reconciled by fitting the conflicting versions together and if that is not possible, you will then have to determine which of the two conflicting versions you will accept.

Now, of course, the plaintiff in a libel suit has an interest in the outcome of the litigation. It is claimed in this lawsuit that the plaintiff's reputation

has been wrongfully impugned and you may infer he brought this lawsuit, at least in part, in order to vindicate his reputation and in evaluating his testimony you may consider Mr. Hotchner's interest in the outcome of this lawsuit.

You may also consider the extent to which Mr. Hotchner's testimony has been corroborated, if you find it has been by witnesses whom you believe. Merely because the plaintiff has an interest in the outcome of the case does not mean that his testimony is not worthy of your belief, but it is one of the many factors which you may consider in deciding what weight is to be given to his testimony.

I told you earlier and I repeat again the law doesn't require any party to call as a witness anybody or all persons who may have been present at any time or place involved in the case or who may appear to have some knowledge of the matters in issue in the trial. Specifically no party, neither the plaintiff nor the defendant, was under any obligation to call Bill Davis as a witness or to call Puche as a witness or to call anybody else who was not called, and you will decide this case based on what you heard here and saw here and on what exhibits were received in evidence and not on some conjecture or suspicion or speculation as to what some witness who was not here might

have said.

I instruct you that the testimony of Davis and Puche are equally available to both sides of this case and neither of them had any obligation to produce either of those witnesses or anybody else who was not produced.

Now I am coming down to the specifics of this case. The plaintiff has proceeded on two separate theories, claims or causes of action. I will refer to the first of them as the cause of action for libel and the second as the cause of action for invasion of privacy.

It is important that the jury keep distinct in your minds the different elements applicable to each cause of action. There will be elements that the two causes of action have in common. However, each is a separate and distinct claim and the verdict which you will be asked to return will require separate determinations on each cause of action and where there are more than one allegedly defamatory statements made concerning the plaintiff in the libel claim, you will consider each one of those separately.

The first cause of action that I will speak with you about is the cause of action for libel. For the plaintiff to recover under the libel cause of action he must prove each of the following four elements. Now

I am going to list the elements of the libel claim and I ask you to pay very close attention to the elements.

First, the plaintiff must prove that one or more of the statements complained about was made of and concerning him.

Second, the plaintiff must prove that the statement complained about was defamatory and third, the plaintiff must prove falsity of the statement, and fourth, he must prove that the defendant Doubleday & Company published the libelous statements either knowing that the statement was false or in reckless disregard of whether the statement was true or false.

The first element I mentioned to you was that the statement complained of must have been of and concerning the plaintiff. The plaintiff is Mr. A.E. Hotchner.

In some of the statements complained of, Mr. Hotchner is referred to by name, so you can tell that these statements are about him. In other passages in the book, as you will recall from your reading of it, the plaintiff Hotchner is not referred to by name, but he contends, and it is for you to decide, but he contends that the statements were made of and concerning him and not about somebody else.

It is for you to determine with respect to those

passages whether the plaintiff has proved by a preponderance of the credible evidence that the statements that you are then considering and which are complained of were made of and concerning Mr. Hotchner and were understood as referring to Mr. Hotchner by persons who read "Hemingway in Spain."

You have each been provided a copy of the book, "Hemingway in Spain" to read during the course of the trial and in considering whether any particular statement was defamatory, you are not to consider the opinions or quotations or descriptions expressed in the book with regard to other persons who are portrayed therein.

Now, the second element of the cause of action for libel is that the statement that you are considering which is complained of was defamatory. In determining whether a particular statement complained of is defamatory, you should consider the relevant passage as a whole and in the context in which it appears in the book. You should construe the words as meaning what persons generally understand the words to mean.

A writing is defamatory if it tends to expose a person to public contempt, ridicule, aversion, that is to say, people turn away from him, or disgrace, or if it tends to induce an evil or unsavory opinion of him in the minds of a substantial number of respectable persons of

the community, men and women such as yourselves.

A writing may be defamatory although it doesnot accuse the plaintiff of any crime or any wrong or any immoral or unethical behavior. However, the writing must be such as to cause him to be shunned or avoided or deprived of the friendly association of respectable members of the community who would read it and believe it.

A writing may be defamatory because of the explicit statement it makes concerning a plaintiff but it may also be defamatory by innuendo, that is to say, by words not stated but which nevertheless convey disparaging statements about the plaintiff.

The test of whether a statement is defamatory is whether it conveys a defamatory meaning to the mind of the ordinary reader, Words such as "obsequious," or "ridiculous," or "out for Number 1" may not in every instance of their use be defamatory. The jury, however, may conclude that if such words are used cumulatively and opprobiously to create a derogatory and unfavorable impressio of the person's character, that they may be found to be defamatory statements.

This is an issue for you the jury to consider and decide.

In considering whether the statements complained

of were defamatory, you are to confine your consideration to the words actually used in the Doubleday edition of "Hemingway in Spain." In determining whether the passages in the English book, "Hemingway in Spain," are defamatory, you are not to consider the Spanish edition or any translation of that edition. The only passages as to which the question of whether or not they are defamatory concerns you are passages which are complained of in the complaint and found in the book in English published by Doubleday called "Hemingway in Spain."

The third element requires that the plaintiff prove that the defamatory statement complained of was in fact false. In determining whether any passage complained of is true or false, slight inaccuracies of expression are immaterial, providing the defamatory charge is true in substance. You could find the passages to be true even though it has not been demonstrated that the precise statements were literally true.

In determining whether any statement complained of is true or false, I believe it would be helpful for you to bear in mind that the statements complained of fall into two general categories: One are statements by Castillo-Puche of what he himself observed and opinions that he held.

And a second category consists of statements by Castillo-Puche of what Hemingway believed or allegedly said to Castillo-Puche about Hotchner, or said to Ordonez or others in Castillo-Puche's presence about Mr. Hotchner.

False statements of fact may be the basis for a recovery for libel. A representation that a particular statement was the opinion expressed by Ernest Hemingway may be treated by you as a statement of fact rather than as an opinion. If Hemingway stated that he held a particular belief and the book so states, it would be true although Hemingway's belief may have had no basis in reality.

Likewise, you might find that certain facts are true but that they did not form the basis of Hemingway's belief and that Hemingway had no such belief or opinion and therefore, the expression in the book of Hemingway's opinion may be found by you to be false.

Now, an expression of the author's opinion, and when I say "author" I mean Castillo-Puche, will not be the basis for a libel action if it qualifies as what is regarded as fair comment. An opinion expressed by anybody in writing is fair comment provided it is based on truly stated facts, to the extent any facts are stated, and secondly, it does not contain imputations of corrupt or

dishonest motives on the part of the person whose conduct or work or personality or appearance is criticized except insofar as such imputations are warranted by the facts and it is an honest expression of the writer's real opinion.

Any such entries in the book which qualify under those criteria which I have just mentioned to you are privileged. Anyone has a right to write and publish such matter and it cannot be the basis for any verdict in favor of a person who is injured thereby.

Now I will go to the fourth element. In order to recover under the libel cause of action, the plaintiff must prove that Doubleday & Company published the passage complained of knowing the passage to be false or in reckless disregard as to whether it was true or false. The plaintiff would satisfy this element if he proved that Doubleday & Company, acting through its officers, employees or agents, knew that the statements made in the English language edition of "Hemingway in Spain," that is to say, the book, Exhibit 1, were false. Plaintiff Hotchner would also satisfy this element if he proved that Doubleday & Company acted, in preparing and publishing and issuing this book, in reckless disregard of the truth or falsity of statements contained therein concerning Hotchner.

Before you may find reckless disregard for the truth you must conclude that defendant Doubleday in fact entertained serious doubts as to the truth of the statements about the plaintiff when it published the book.

You may find that Doubleday acted in reckless disregard for the truth if you find that there were obvious reasons to cause a reasonable person to doubt the truthfulness of Castillo-Puche, the author, or the accuracy of his writing.

In considering whether there were obvious reasons to doubt the truth of the statements published, you may consider all of the surrounding circumstances. You may consider any evidence of negligence on the part of Doubleday, its employees or its agents and you may consider any ill will, bias, spite or prejudice of Castillo-Puche against Hotchner.

In determining whether Doubleday acted in reckless disregard of the truth, although you may consider any negligence on the part of Doubleday or its employees or agents, I wish to emphasize to you that negligence on the part of Doubleday or failure of Doubleday to investigate or verify the statements complained of standing alone would not be sufficient to make a finding of reckless disregard.

If, however, Doubleday had a clear reason to suspect the truth of the statements or some of them, then you may find that there was some obligation for it to investigate further. If you so find and you also find that such investigation would have shown that Castillo-Puche was untruthful about Hotchner, then you may find reckless disregard.

Recklessness implies a higher degree of culpability than ordinary or mere negligence. A failure to exercise ordinary or reasonable care in ascertaining the truth of published material does not, standing alone, render a publisher liable for damages in libel against a public figure.

To act recklessly means to act wantonly with indifference to the consequences. If Doubleday published "Hemingway in Spain" in good faith, sincerely believing that the statements contained in that book were true, then it did not act recklessly.

(continued on next page.)

Charge Hotchner follows Blanche



In considering the state of mind of Doubleday, you must assume that the people at Doubleday charged with this responsibility were reasonable persons and that their mental capacities were that of a reasonably prudent man or woman, and as I instructed you earlier, the proof of this element must be clear and convincing.

As mentioned, Doubleday is a corporation and a corporation is to be treated by you as a single entity. It is an artificial person which does business only through its agents, its officers, its directors and its employees. Notice or knowledge of any fact on the part of any agent or employee of the corporation will be considered by the jury as knowledge of or notice to the corporation if such knowledge or notice was received by the agent or employee in the course of his or her employment and within the scope of his or her duties.

The plaintiff contends in this case that Doubleday had reason to know that the statements by Castillo-Puche in the Spanish edition of the book were false and recklessly disregarded this information and plaintiff contends, among other contentions which he advances in this case, that Doubleday was on notice that Castillo-Puche bore ill-will toward Hotchner because of the language used about Hotchner in the original Spanish

edition.

Plaintiff also contends that Doubleday learned of this through its translator, Mrs. Helen Lane.

As I instructed you, a corporation acquires knowledge only through knowledge received by its employees or agents in the course of their employment and within the scope of their duties. The parties agree that Mrs. Lane was not an employee of Doubleday.

The issue for your determination is whether Mrs. Lane was the agent of defendant Doubleday. The parties agree that Mrs. Lane was an independent contractor, that is to say, she was retained pursuant to a contract to perform the single specific task of translating the Castillo-Puche book from Spanish to literary English.

A person who is an independent contractor may also be an agent, but, by the same token, a person who is an independent contractor need not be an agent.

An agency relationship is created as the result of conduct by the parties manifesting that one of them is willing for the other to act for him and subject to his control and that the other consents so to act, and you must determine whether Mrs. Lane was acting subject to the control of Doubleday such that she was under obligation to report to Doubleday matters that came to

her attention during the course of translating the Castillo-Puche book. If she reported some such matters to Doubleday you may consider that in so doing she was acting in accordance with her arrangement with Doubleday.

There has been some evidence in this case that the Doubleday employees communicated with Mrs. Lane at various stages prior to the completion of her translation and perhaps some evidence that Doubleday was not merely concerned with the final product that Mrs. Lane produced, that is to say, her translation, but rather that she worked subject to some direction or control of Doubleday.

You have to resolve this question in considering all of the circumstances surrounding the acquisition of the Spanish edition and its translation and you will determine whether the relationship between Mrs. Lane and Doubleday was an agency relationship and implied in that relationship that she would inform Doubleday of inaccuracies or any other problems presented to her in the course of the translation.

If you find that Mrs. Lane was the agent of Doubleday in this regard, then any knowledge which she had that the statements contained in the Castillo-Puche book were false or any knowledge she had of circumstances

such as hatred by Puche of Hotchner or errors by Puche in other matters that would suggest that the statements are false, are to be treated by you as matters known to Doubleday, but unless you are so satisfied, Doubleday may not be deemed to have notice through Mrs. Lane of the Spanish words in the original book which do not appear in the Lane translation. Of course, it will have notice through Mrs. Medina of anything contained in the Lane translation because the evidence shows that that did come into the possession of the home office of Doubleday in New York.

Where the Lane translation of certain pages is not available at this trial, you may infer that she translated correctly and if you believe the testimony of Professor Purczinsky that he translated correctly, you may consider that what he translated is what the Lane pages which are missing contained.

This affects Plaintiff's Exhibit 30 in evidence which compares the translations with the book.

I have concluded my discussion of the cause of action based on a claim of libel. I will now go on to the cause of action claimed for invasion of privacy.

The second cause of action that you will consider is what I will refer to as invasion of privacy. The right

to recover money damages for invasion of privacy is governed by a statute of the State of New York and the essence of that claim is that under the circumstances of this case for plaintiff to recover for invasion of privacy he must prove each of the following four elements:

First, plaintiff Hotchner must prove that his name was used for advertising purposes or for the purpose of trade.

Second, he must show that he did not give written consent to the use of his name.

And third, the plaintiff Hotchner must demonstrate that he was portrayed in a false light or as participating in fictionalized events, that is to say, conversations or actions or incidents that never actually happened.

Fourth, that Doubleday used plaintiff's name in a context so portraying Hotchner, knowing that context to be false or fictionalized or in reckless disregard as to whether the context in which he was so portrayed by name was true or false and fictionalized.

The first element of the invasion of privacy cause of action is that the defendant Doubleday used plaintiff's name for advertising purposes or for the purposes of trade.

To find that the plaintiff's name was used for advertising purposes, you must find that the defendant Doubleday commercially exploited plaintiff's name in the sale of its book "Hemingway in Spain". If you do not find commercial exploitation in connection with his name and the book, then it was not used for advertising purposes.

The words purposes of trade have a broader meaning. Truthful and factual accounts of newsworthy events on public personalities, such as Ernest Hemingway, are in the public interest. The publication of accounts of such matters is protected by the First Amendment to the Constitution and could not be and is not a violation of law.

Although books are published for profit and undoubtedly Doubleday hoped to profit from the English language publication of "Hemingway in Spain", that alone does not determine that the plaintiff's name was used for purposes of trade.

This element is intimately related to the element of false light, which I will discuss with you in a moment.

The public does not have the same interest in fictionalized accounts that it has in the publishing

of truth, and if you find that plaintiff's name was used in connection with a fictionalized account, you may properly consider and find that the publication of "Hemingway in Spain" made use of Hotchner's name for purposes of trade.

Conversations which never happened in which it is written in the book Hotchner is referred to or mentioned should be regarded by you as fictionalized and such fictionalized use may be regarded as use of his name for purposes of trade, assuming his name is used.

The second element is not seriously contested by the parties. For the plaintiff to recover in an invasion of privacy case, he must prove that he did not provide the defendant Doubleday with written or other consent for the use of his name in the Castillo-Puche book in English, and there is no showing in this case of any such consent here. So you need not concern yourselves with that.

The third element requires that the plaintiff prove that he was portrayed in a false light. It is not necessary that this false light be defamatory or that it have the effect of subjecting plaintiff to public contempt or ridicule, as I discussed earlier in connection with the first cause of action. Plaintiff need prove only

that the portrayal of him in "Hemingway in Spain" or the portrayal of the nature and extent of his relationship with Hemingway found in the book is inaccurate and false.

In considering whether the accounts of events concerning Hotchner in "Hemingway in Spain" are inaccurate and false, I instruct you that minor mistakes or inaccuracies would not satisfy this requirement. Rather, the falsity or the inaccuracies must be such that you find the account of Hotchner in the book to be substantially false.

In determining whether or not Mr. Hotchner has been placed in a false light, you may consider any fictionalized dialogue and erroneous attribution of quotes to particular persons and imagined events to the extent they affect Hotchner. Again, I remind you that the inaccuracies must be such as to convince you that the account of Hotchner is substantially false.

You could find that the book portrays Hotchner in a false light if you find that in truth and in fact he was at the times mentioned, not a trusted friend and confidant of Ernest Hemingway but was represented instead in the book as something entirely different, that is, as a toady, a hypocrite and a person Hemingway did not trust and tolerated only for business purposes or for whatever else the book says.

The fourth element requires that the plaintiff prove that Doubleday published "Hemingway in Spain" knowing that the accounts contained in that book were false concerning Hotchner or that Doubleday so acted with reckless disregard as to whether the accounts were true or fictionalized and false. I have previously discussed this element with you in regard to the cause of action for libel. What I said earlier applies to this element in the second cause of action as well.

I again remind you that proof that Doubleday published "Hemingway in Spain" knowing it to be false or in reckless disregard of whether it is true or false must be clear and convincing.

Now I have completed my discussion of the second cause of action and I will now discuss with you the measure of damages appropriate to both causes of action.

By discussing damages with you, I do not suggest that the plaintiff ought to recover any damages or the amounts or amount that he ought to recover if you find that he has proven either or both causes of action. Those are questions solely for you, the jury, and I leave those questions entirely to you.

Do not conclude because I talked about damages

that that has any bearing on the decision which you have to make as to whether or not he is entitled to any damages. The measure of damages as to each cause of action should be considered by you separately and you will be asked to render your verdict as to each cause of action separately.

I caution you, however, that if you find that the plaintiff has suffered an injury as a result of both the publication of a libel and as a result of the invasion of his privacy and you find that the injury caused by both acts is one and the same, then the plaintiff is permitted to recover for his injury only once even if he prevails on both claims.

You are going to be asked to record your verdict on a form of special verdict which will be distributed to you in written form when you retire to deliberate. One of these forms will be filled out by the foreman and signed after the jury has agreed and the single form will reflect the unanimous agreement of the jury as to how each of these questions listed on the special verdict form should be answered.

When you receive that form, you will notice there is a question at the end of that form which is to be answered in the event that you award damages to plaintiff on both causes of action and that question asks you

to set forth the amount of the damages awarded on the second cause of action which duplicate damages if any previously awarded in connection with the first cause of action.

Please note that it is possible, depending on your decision with respect to the facts of this case, that plaintiff could fail in the first cause of action and prevail in the second, or vice versa, and this is true because the elements required to be proved in each cause of action or separate claim are different.

If the plaintiff fails to prove all of the elements of either or both claims, your verdict must be for the defendant on the claim as to which he has failed to discharge the burden of proof.

If you find that the plaintiff is entitled to recover, then you should award him an amount as to the claim on which he is entitled to prevail that in the exercise of your good judgment and conscience you find to be fair and just compensation for the injury to his reputation and the humiliation and mental anguish in his public life or in his private life which you find was directly and actually caused by Doubleday's statement which you find libelous or invasion of privacy which you find.

In fixing such amounts, you may consider his standing in the community, his reputation as an author, or writer or lecturer, the nature of the statement or statements made about him which you find to be defamatory, the extent to which the Doubleday edition of "Hemingway in Spain" was circulated or sold or reviewed by book reviewers, the tendency of the statement complained of which you find to be defamatory to injure a person situated as is Mr. Hotchner, and you will take into consideration all the other facts and circumstances surrounding the situation.

These damages are of a general nature. They cannot be computed with mathematical accuracy. Fair compensation may vary from the nominal damages of one dollar, if you find the injury to be slight, to a substantial sum if you find the injury to be substantial.

For the most part, such matters as humiliation and anguish exist in the mind of the person and, of course, you cannot look into his mind to see what went on there as a result of learning of the publication of this book, but you can use your common sense and if you find that he was humiliated or subjected to anguish, you may make a fair award for that, assuming that all other elements of the claim have been proved to your satisfaction

and in accordance with my instructions.

There is another element which you may consider in computing any damage which the plaintiff suffered. This element consists of any actual financial loss which the plaintiff suffered as a result of the Doubleday publication and this type of damage, if any is present in this case, differs from the more general damage to reputation and professional standing that I discussed with you a moment ago.

This additional amount is the amount that you find the plaintiff actually lost as a result thereof in money and as to this item you may not speculate and you cannot award any such actual damages unless you are satisfied that they actually were suffered.

In addition to the matter of actual and general damages which will be taken and reported together by you, you may also award to the plaintiff punitive or exemplary damages.

Punitive damages are allowed solely to punish a defendant who has published with a deliberate intent to injure the plaintiff or in a reckless disregard of the truth or falsity of the statements made and without regard to their possible injurious consequence for the plaintiff. The theory of punitive damages is to deter or prevent this

defendant and others from the commission of similar acts in the future.

If you find that the defendant Doubleday did not publish "Hemingway in Spain" knowing that one or more statements therein contained were false or recklessly disregarding the truth or falsity of this statement, you may not award punitive damages, indeed under those circumstances it is your duty to return a verdict for the defendant for, in addition to being necessary for the recovery of punitive damages, these are essential elements of both libel claims and invasion of privacy claims where a public figure such as Mr. Hotchner is involved.

If, however, you find that Doubleday published "Hemingway in Spain" knowing the statements were false or recklessly disregarding the truth or falsity of statements and without regard to the injury which might be caused to the plaintiff, then you may award punitive damages.

The amount you find as punitive damages need bear no particular ratio or relationship to the amount that you award as compensatory damages except that each measure of damages should be what appears to the jury to be fair and just under the circumstances.

There is no exact rule from which to determine

the amount of punitive damages. You may fix such amount, if any, as you find in your sound judgment and discretion the character of this defendant's acts calls for in order to punish the defendant and to deter others from similar acts.

The fact that the jury is empowered by law to award punitive damages does not mean that this power must be exercised. Indeed, it should not be except as the jury finds it to be fair and just under the circumstances.

And in your verdict you will be asked to state separately as to each cause of action whether you are awarding any punitive damages and if so, in what amount.

A word or two about your deliberations as jurors. It is your duty, I told you this a number of times, I say it once more only for emphasis, to try the issues in this case fairly and impartially and each juror is entitled to his or her own opinion. But you are required to exchange views with your fellow jurors. That is the purpose of jury deliberation. To discuss the evidence, to talk about it with each other politely, take your time, listen to each other and after you have talked about it, reach a just verdict based on the evidence and the result of your deliberation.

It is improper to reach a verdict by compromise. The verdict must represent the honest and sincere viewpoint of each juror as to how this case ought to be decided. If you have a point of view and after reasoning with your fellow jurors it appears that your judgment is open to question, then, of course, you should have no hesitancy in yielding your point of view or changing your mind but that is only if you are convinced that the opposite point of view is really one that satisfies your individual judgment and conscience as to how this case ought to be decided.

You are not to give up a point of view that you conscientiously believe in simply because you are outnumbered or outweighed by the other jurors.

To answer any question on the special verdict form, it must be unanimous.

If you want to see the exhibits, the exhibits include the statement of uncontested facts and the stipulation of testimony, the foreman may send out a note asking either for all the exhibits or asking for whatever particular exhibits the jury wants to see and if a note requesting the exhibits is sent out, the exhibits which are requested will be sent into the jury room.

Mr. Papargyriou and Mr. West, at this time I

excuse you and I will ask you to leave the courtroom and come back Monday morning at 9:00 o'clock to Room 109 to complete your additional jury service or the balance of it. I am going to ask each of you gentlemen, until the rest of the jury have finished their deliberations, do not discuss this case with anybody. Do not speak with or communicate with any member of the jury or any attorneys or witnesses or parties or anything like that.

After the jury has completed its services and they have been discharged, and that might not be until next week, then, of course, you have all your rights of free speech but in the meantime please do not say anything about the case to anybody, do not discuss it, do not give any indication.

You two gentlemen may now withdraw from the courtroom with the thanks of the Court.

Juror Number 1, Mrs. Munoz, will be the forelady of the jury and you will write any notes and you will also fill in the final copy of the special verdict and the other copies can merely be used as work sheets or scratch paper and when you are finished, tear them up.

At this time, Mr. Clerk, will you swear the marshal.

(A marshal was duly sworn)

THE COURT: I am going to ask the rest of the jury to remain in the jury box for a moment. Do not discuss the case because I will be going into my office behind the courtroom and speak briefly with the attorneys to see if there is any additional instruction they would like to have me give you or to see if there is anything that I may have omitted or anything that I may wish to amplify and since you may not have heard it all yet, please be patient just a little bit longer and just remain where you are until I return.

(In the robing room.)

THE COURT: Do you have any additional requests or exceptions?

MR. ROSENMAN: Mr. Hauser has one additional request and we would like to raise one additional question about Answer 26 in the special verdict.

MR. HAUSER: Before we get to that, your Honor, on the charge, would you hear that first?

THE COURT: Yes.

MR. HAUSER: To the best of my hearing, your Honor spoke about the knowledge of Lane being imputed to the defendant Doubleday as a matter of jury finding. The knowledge of Lane, that Doubleday could be charged with Lane's knowledge if the jury so finds. But you did not refer to the knowledge of Medina and Austin. Independent of Lane, Medina had knowledge --

THE COURT: I really believe I did refer to it. I think I did. I said that as to what was contained in the Lane translation, Doubleday had notice through Medina. I'm sure I did. The reason I remember that is I interpolated it, it's not in my notes. I decline to charge further on that issue and you may have an exception.

What's wrong with 26?

MR. ROSENMAN: Isn't there somewhere "if any."

26a. "The amount awarded as compensatory damages in 25a includes the following amount, if any, allowed in 20a."

In other words, they could say compensatory damages $10,000 on libel and $15,000 on right of privacy. We need an "if any" in here.

THE COURT: I have no objection to putting in "if any." Where do you want it to go? I don't think it's necessary, but if counsel want it --

MR. ROSENMAN: "Includes the following amount, if any."

THE COURT: It will have to be penned in on seven copies. That's on 26a you want that to go? And 26b, the same thing. "The following amount, if any, allowed" --

THE COURT: You have no objection to that, do you?

MR. MARSHALL: Would the same apply to the first line, the amount awarded as compensatory damages,"if any."

THE COURT: 26a and 26b. I understand they want me to add "if any" to 26a and 26b. I am willing to do that.

MR. MARSHALL: Should it be added in the second place if --

MR. HAUSER: Obviously, it means "if any."

THE COURT: Do you have anything else?

MR. ROSENMAN: No, sir.

MR. CALLAGY: The only question I have is my understanding of Spahn that there must be a preponderance of fictionalization.

The way this is laid out, they might find one false statement and come back with a privacy award. I don't think that that is what the law is.

THE COURT: You can have an exception as to that. We will see how they answer. Fortunately, our special verdict form will protect us on this. Anything else?

MR. CALLAGY: That is all, your Honor.

THE COURT: All right, gentlemen, thank you.

(In open court.)

THE COURT: Members of the jury, I have made two changes in ink in the form of special verdict and you are not to draw any inference by reason of the fact that we made such a change after the papers were typed up and I am not having it retyped because I want to save time. We will therefore deliver six copies of this to the jury room as soon as the ink changes are completed.

I will have the U. S. Marshal hand it in and I ask you to go carefully starting right on the first page and discuss these matters in accordance with my instructions given to you as to the law and when you

have reached a unanimous answer to a particular question, mark it so on the original copy of the special verdict, the final copy, and read the directions because some of these directions say, for example, if your answer is no, omit the balance of Question 1 and proceed to Question 2. Make sure you do follow that.

All right, the marshal may now escort the jurors to the jury room.

(At 5:15 the jury retired to commence thei. deliberations)

THE COURT: I would like counsel to confer with the clerk and make certain that the clerk has all of the exhibits in order and I also ask you if we may have a stipulation that any note requesting exhibits which the Court considers clear, that I won't have to convene you. I will just send the exhibits in in compliance to the note. If the note is vague, then, of course, I will have to discuss it.

MR. CALLAGY: Yes.

MR. ROSENMAN: Yes, we will stay here.

THE COURT: Is that agreeable with you, Mr. Callagy?

MR. CALLAGY: Yes.

THE COURT: All right, gentlemen, thank you very much.

(At 5:55 in the robing room.)

THE COURT: Gentlemen, the Court proposes to inquire in writing of the jury as to whether they wish to have the U.S. marshal take them to dinner or to stay and suspend at 6 p.m. or later and resume Monday. I understand that the form of this note, which I'll have the clerk mark, is agreeable to both of you.

MR. ROSENMAN: Yes, sir.

MR. CALLAGY: Yes, sir.

THE COURT: Court's Exhibit 3 marked for identification.

(At 6:05, note from jury marked Court Exhibit 4.)

THE COURT: Gentlemen, I have a note from the jury which has been marked Court Exhibit 4. It says:

"The jury would like a restate of the definition of the purposes of trade on the second cause of action."

I will now invite the jury back in and give that to them.

(In open court - jury present)

THE COURT: Members of the jury, I have your note which has been marked Court's Exhibit 4 for identification:

"The jury would like a restate of the definition of the purposes of trade on the second cause of action."

I will now review with you my instructions with respect to that.

You will recall that I told you first that the words purposes of trade have a broader meaning than the words advertising purposes which I had mentioned in

connection with the first part of that element of the second cause of action.

And I instructed you, if you will recall, that truthful and factual accounts of newsworthy events of public personalities, such as Ernest Hemingway, are in the public interest and that publishing such accounts is a privileged activity and it is not a violation of any statute or any rule of law to do so.

I also told you that although books are published for profit and undoubtedly defendant intended to make a profit from this book, that alone does not determine that the plaintiff's name was used for purposes of trade.

And then I told you that this particular element of the second cause of action is related closely to the so-called element of false light which I later explained to you and I stated that the public does not have the same interest in fictionalized accounts about real persons that it has in the publishing of truth and that if you find the plaintiff's name, Hotchner's name was used in connection with a fictionalized account concerning him, you may properly consider and find that the publication of "Hemingway in Spain" was made for purposes of trade.

And I stated to you that conversations which never happened, if there be any, in which it is written in the book that Hotchner is referred to or mentioned may be regarded by you as being fictionalized and the gist of this element of the use of Hotchner's name for purposes of trade would have to include in it fictionalization of events or conversations, using Hotchner's name or having to do with his name, which were not truthful but fiction and they would have to be of reasonably substantial nature.

Just one mistake would not constitute such a use but the use must be a fictionalized conversation or a fictionalized depicting of events which never happened relating to his name in the book.

If you find they did that in any substantial amount, that would constitute a use for purposes of trade for purposes of the second cause of action.

I will not go on and discuss false light because you have not asked me to, but if there is any additional information that the jury wishes to have, of course, the jury will follow its present practice and send out another note.

You may now withdraw from the courtroom)

(At 6:10 p.m. the jury resumed their deliberations)

Service of [illegible] copies of the within
[illegible] is admitted this
30 day of March 1976

Irwin Rosenman
ATTORNEY FOR [illegible]